

No. 10743 Vol

IN THE

2388

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

AARON FERER & SONS, a co-partnership,

Appellant,

vs.

RICHFIELD OIL CORPORATION, a corporation,

Appellee.

VOLUME I.

(Pages 1 to 464 Inclusive)

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division.

FILED

JUL 15 1944

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italics* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

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For Appellee:

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WILLIAM J. DE MARTINI,
555 South Flower Street,
Los Angeles, Calif.

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 1718-H

No. 465936

AARON FERER & SONS, a Co-Partnership,
Plaintiff,

vs.

RICHFIELD OIL CORPORATION, a Corporation,
Defendant.

COMPLAINT
DECLARATORY JUDGMENT.

Plaintiff complains and alleges:

I.

That at all times herein mentioned, plaintiff was and now is a co-partnership, comprised of Morris Ferer, Ester Peggy Ferer and Robert Irving Ferer, doing business under the fictitious name and style of Aaron Ferer and Sons, and having its principal place of business in the County of Los Angeles, State of California.

II.

That at all times herein mentioned, the Defendant was and now is a corporation duly organized under the laws of the State of Delaware, and having *it's* principal place of business in the County of Los Angeles, State of California.

III.

That on or about the 17th day of January, 1941, plaintiff and defendant entered into a contract in writing, a true and correct copy of which is attached hereto, marked Ex-

hibit "A", and made a part of this Complaint. That there was attached to said written contract, a map, which said map was referred to in said written contract as Exhibit A. That said map indicated the location of certain refinery and producing facilities and equipment located on the said premises described in said written contract, and further indicated with red markings, certain of such refinery and producing facilities and equipment which were to be excluded from the conveyance provided for in said written contract. That said map is omitted from Exhibit "A" attached to this complaint, for the reason that it is bulky; that defendant has in *it's* possession and attached to *it's* executed copy of said written contract, a true and correct copy of said map.

IV.

That there is located on the premises described in said written contract, approximately thirty-seven oil wells. That said oil wells are now and for several years last past have been inoperative. That there is contained in said oil wells certain metal, to-wit: oil well casing and pipe.

V.

That an actual controversy and dispute exists between the parties hereto with respect to said written contract, and more particularly with respect to whether or not the conveyance to plaintiff by defendant of refinery and producing facilities and equipment, includes the metal, to-wit: the casing and pipe contained in said oil wells and whether or not plaintiff has the right under said written contract to dismantle and remove such casing and pipe from said oil wells and from said premises.

VI.

Defendant claims and contends that said casing and pipe

in said oil wells is not included in the conveyance from defendant to the plaintiff provided for in said written contract, and that plaintiff has no right to dismantle or remove same or any portion thereof from said oil wells and/or from said premises. Plaintiff claims and contends that under said written agreement, defendant conveyed to plaintiff and granted plaintiff the right to dismantle and remove all refinery and producing facilities and equipment on the premises, except certain refinery and producing facilities and equipment specifically reserved. That the casing and pipe contained in said oil wells constitutes producing equipment. That said casing and pipe was not specifically reserved in said written contract and that plaintiff therefore acquired from defendant under said written contract, all of said casing and pipe and has the right to dismantle and remove same from said wells and from said premises.

Wherefore, plaintiff, as a party to said written contract, and a party interested, desires a declaration of the rights and duties of plaintiff and defendant with respect to the subject matter of this complaint, together with such other relief as may be requisite and proper to carry out or enforce such declaratory judgment.

PHILIP N. KRASNE,

CARL B. STURZENACKER,

Attorneys for Plaintiff.

Exhibit "A" omitted. Same as Exhibit "A" attached to amended complaint.

[Verified.]

[Endorsed]: Filed Jul. 8, 1941. L. E. Lampton, County Clerk; by M. Samuels, Deputy.

[Title of Superior Court and Cause.]

NOTICE OF FILING OF PETITION FOR REMOVAL AND BOND AND NOTICE OF APPLICATION FOR AN ORDER GRANTING REMOVAL TO THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION, & PETITION FOR REMOVAL.

To the Plaintiff, Aaron Ferer & Sons, a copartnership,
and to Philip N. Krasne and Carl B. Sturzenacker,
its attorneys:

You and Each of You Will Please Take Notice that on July 14, 1941, at the hour of 3:00 o'clock P.M. of said day, the Defendant, Richfield Oil Corporation, a corporation, will file in the office of the Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, its petition for removal of the above entitled cause from the Superior Court of the State of California, in and for the County of Los Angeles, the court in which the above entitled action is now pending, to the District Court of the United States in and for the Southern District of California, Central Division, and a bond on removal, conditioned in accordance with law, copies of which said petition and bond are hereto annexed and served upon you; and

You and Each of You Will Please Take Further Notice that on July 15, 1941, at the hour of 9:30 A.M.,

or as soon thereafter as counsel may be heard, the Defendant, Richfield Oil Corporation, a corporation, will bring on for hearing said petition for removal in Department 35 thereof, and will move the above entitled Court in said Department 35 for an order approving said bond on removal, copy of which is hereto annexed, and will apply for an order by the said Court removing said cause to the District Court of the United States in and for the Southern District of California, Central Division, in pursuance of said petition for removal.

Said motion will be made upon the grounds stated in said petition, and will be based upon this notice and upon all the files and records in said cause.

Dated: July 14, 1941.

Robert E. Paradise

ROBERT E. PARADISE,

Attorney for Defendant,

Richfield Oil Corporation.

[Title of Superior Court and Cause.]

PETITION FOR REMOVAL TO THE DISTRICT
COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF CALIFORNIA,
CENTRAL DIVISION.

To the Honorable Superior Court of the State of California, in and for the County of Los Angeles:

Your Petitioner, Richfield Oil Corporation, a corporation, respectfully shows to this Honorable Court as follows:

1. Your Petitioner herein, Richfield Oil Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and was so organized and existing as a corporation under the laws of the State of Delaware at the time of the commencement of the above entitled action, and was at said time and now is a citizen and resident of the State of Delaware.

2. That the complaint herein alleges that Plaintiff, Aaron Ferer & Sons, is a co-partnership, comprised of Morris Ferer, Ester Peggy Ferer, and Robert Irving Ferer. That each of said persons, to-wit, Morris Ferer, Ester Peggy Ferer, and Robert Irving Ferer, are, and at the time of the commencement of the above entitled action were, citizens and residents of a state of the United States, to-wit, as your Petitioner is informed and believes, and therefore alleges, citizens and residents of the State of California. That your Petitioner is informed and believes, and therefore alleges, that at the time of the commencement of this action, and at all times since, Plaintiff,

Aaron Ferer & Sons, a co-partnership, was and now is a citizen and resident of the State of California.

3. The above entitled action was commenced against the Petitioner in the Superior Court of the State of California in and for the County of Los Angeles and is now pending in said court, and is an action of civil nature of which the District Court of the United States in and for the Southern District of California, Central Division, has original jurisdiction.

4. That the above entitled action is one brought by the said Plaintiff against your Petitioner, Richfield Oil Corporation, as Defendant, upon a written contract, dated January 17, 1941, under the terms of which said contract Plaintiff alleges that the Plaintiff acquired from the Defendant all of the oil well casing and pipe contained in approximately 37 oil wells located upon the premises described in the written contract, and that the Plaintiff has the right to dismantle and remove said oil well casing and pipe from said wells and from said premises. That the said premises described in said written contract comprise a parcel of real property containing approximately 400 acres, under which said parcel there existed at the time of the commencement of the above entitled action, and now exists, a reservoir of oil, belonging to your Petitioner, of an approximate value in excess of Three Million (\$3,000,000.00) Dollars, which said oil, or a substantial portion thereof, may be produced from the oil wells described in said Plaintiff's complaint now existing upon said premises. That under the provisions of Section 3233 of the Cali-

fornia Public Resources Code and the rules and regulations of the California Division of Oil and Gas, said oil well casing and pipe cannot be removed from said wells without the abandonment of said wells in the manner provided by law. That if Plaintiff were entitled to remove the oil well casing and pipe from said wells the cost to Defendant of installing additional casing and pipe in said wells, if such installation could be accomplished after the abandonment of such wells, would be a sum in excess of Fifty Thousand (\$50,000) Dollars. That if Plaintiff were entitled to remove the oil well casing and pipe from said wells, and if Defendant should be unable, because of said abandonment, to install additional casing and pipe in said wells, the cost to Defendant of drilling the same number of additional wells on said land, together with the cost of the casing and pipe to be installed therein, and the installation thereof, would be an amount in excess of Seven Hundred Fifty Thousand (\$750,000.00) Dollars. That accordingly at the time of the commencement of this action, and at all times since, the value of said wells, with said oil well casing and pipe installed therein, as the same now exists, and which said wells are capable of producing oil as aforesaid, was and is an amount in excess of \$50,000.00.

That in the complaint in the above entitled action Plaintiff seeks a declaration that Plaintiff is entitled to said oil well casing and pipe and is entitled to dismantle and remove said casing and pipe from said oil wells and from said premises, and Plaintiff seeks further "such other

relief as may be requisite and proper to carry out and enforce such declaratory judgment". That in said complaint Plaintiff alleges that Defendant claims and intends that Plaintiff has no right to dismantle or remove said oil well casing and pipe or any portion thereof from said oil wells or from said premises; that Plaintiff has asserted to Defendant that the damages to Plaintiff resulting from Defendant's preventing Plaintiff from dismantling and removing said oil well casing and pipe from said wells and premises are in an amount in excess of Twenty Thousand (\$20,000.00) Dollars.

That, as aforesaid, the controversy between the Plaintiff and your Petitioner is of a civil nature, at law or in equity, and involves a sum in excess of Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs.

5. That said complaint sets forth, as between Plaintiff and your Petitioner herein, a controversy entirely between citizens of different states, to-wit, between the Plaintiff co-partnership and the co-partners thereof, all citizens of the State of California, and the Petitioner herein, a citizen of the State of Delaware.

6. A copy of the complaint and summons in the above entitled matter were served upon the Petitioner in the State and County of Los Angeles on July 8, 1941, and your Petitioner has not yet appeared in answer to the complaint and summons served upon it, nor filed any pleading in said action, nor has the time to plead, answer, or demur to the same allowed under the statutes of the State of Cali-

fornia and the laws and rules of practice in this court expired, and the time for Petitioner to appear and plead herein will not expire subsequent to July 18, 1941.

7. Your Petitioner has made due written notice to Plaintiff of the time and place of the filing of this Petition and a bond on removal, and of application to the above entitled court for removal of this cause to the District Court of the United States, Southern District of California, Central Division, pursuant to this petition for removal.

8. There is presented herewith a good and sufficient bond as by statute in such cases made and provided, which said bond is in the penal sum of One Thousand (\$1,000.00) Dollars and is conditioned upon the entering into the District Court of the United States in and for the Southern District of California, Central Division, within thirty (30) days from the date of the filing of this petition, of a certified copy of the record of this action in said District Court of the United States for the Southern District of California, Central Division, and for the payment of all costs which may be awarded by said Court if the said District Court of the United States shall determine or hold that this suit was wrongfully or improperly removed thereto.

Wherefore, your Petitioner prays that this Court proceed no further herein except to accept and approve the bond presented herewith and to make the order of removal as required by law, and to order that no further proceed-

ings be taken herein and to direct a transcript of the record herein to be prepared, made, and certified by the Clerk of this Honorable Court as provided by law to the said District Court of the United States in and for the Southern District of California, Central Division, in the manner and form as provided by law.

Robert E. Paradise

ROBERT E. PARADISE,

Attorney for Defendant,

Richfield Oil Corporation.

[Verified.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION TO REMOVE

I.

An action may be removed from the State Court to the District Court of the United States, where the citizenship of the diverse parties thereto, and the matter in controversy exceeds the sum of Three Thousand Dollars (\$3,000.00), exclusive of interest and costs.

28 U. S. C. A., Section 71 (Judicial Code, Section 28 Amended).

II.

If an action is one of which the United States District Court can rightfully take jurisdiction, then upon the filing of a petition for removal in due time with a sufficient bond the action is in law removed and the State Court

in which it is pending loses jurisdiction to proceed further and all subsequent proceedings in that court are void.

28 U. S. C. A., Section 72 (Judicial Code, Section 29).

Madisonville Traction Co. vs. St. Bernard Mining Co., 196 U. S. 239; 49 Law Edition 462, 464.

III.

The jurisdictional amount may appear in the petition for removal. The jurisdictional amount is determined by the amount in controversy, i. e., the value of the property which the plaintiff is seeking to recover or the value which the defendant stands to lose if the plaintiff is successful.

Crockett vs. Overfield, 22 Fed. Supp. 915.

Waha-Lewiston Land & Water Co. v. Lewiston-Sweetwater Irrigation Co., 158 Fed. 137, 139.

Morrow vs. Mutual Casualty Co., 20 Fed. Supp. 193.

Deland vs. Hewitt Soap Co., Inc., 27 Fed. Supp. 482.

Studebaker vs. Salina Water Works Co., 195 Fed. 164.

Southern Cash Register Co. vs. National Cash Register Co., 143 Fed. 659.

Received copy of the within Notice this 14th day of July, 1941. Philip N. Krasne, Attorney for Plaintiff.

[Endorsed]: Filed Jul. 14, 1941. L. E. Lampton, County Clerk; by B. B. Burris, Deputy.

[Title of Superior Court and Cause.]

BOND ON REMOVAL

Know All Men by These Presents: That the Hartford Accident and Indemnity Company, a corporation duly organized and existing under the laws of the State of Connecticut, and authorized to transact business in the State of California, is held and firmly bound unto the above named Plaintiff in the sum of One Thousand and no/100 (\$1,000.00) Dollars, for which payment well and truly to be made, it binds itself, its successors and assigns, jointly and severally, firmly by these presents.

The Condition of the Above Obligation Is Such That, Whereas, said Richfield Oil Corporation, a Corporation, has filed its petition in the Superior Court of Los Angeles County, State of California, for the removal of a certain cause therein pending, wherein said Richfield Oil Corporation, a Corporation, is Defendant, and said Aaron Ferer and Sons, a Copartnership, is Plaintiff, to the District Court of the United States, Southern District of California, Central Division.

Now, Therefore, if the said Richfield Oil Corporation, a Corporation, shall enter in the said District Court of the United States, Southern District of California, Central Division, within thirty (30) days from the date of filing said petition, a certified copy of the record in said suit and shall well and truly pay all costs that may be awarded by said District Court of the United States, Southern District of California, Central Division, if said Court shall hold that said suit was wrongfully or improperly removed there-to, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, Sealed and Dated this 11th day of July, 1941.

HARTFORD ACCIDENT AND
INDEMNITY COMPANY,

By Dick W. Graves [Seal]

(DICK W. GRAVES)

Attorney-in-Fact.

State of California,

County of Los Angeles,—ss.

On this 11th day of July, in the year 1941, before me, Ida Fuhrmeister, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Dick W. Graves, known to me to be the Attorney-in-Fact of the Hartford Accident and Indemnity Company, the Corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the Corporation therein named, andhe acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notarial Seal)

Ida Fuhmeister

Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires April 26, 1942.

Bond approved July 15, 1941. Kurtz Kauffman, Court Commissioner of Los Angeles County.

Bond approved Jul. 15, 1941. George A. Dockweiler, Judge.

[Endorsed]: Filed Jul. 14, 1941. L. E. Lampton, County Clerk; by B. B. Burris, Deputy.

In the Superior Court of the State of California, in and for the County of Los Angeles.

July 15, 1941. Present, Hon. George A. Dockweiler, Judge Presiding. No. 465936. Department 35.

AARON FERER & SONS, ETC.,

Plaintiff,

vs.

RICHFIELD OIL CORPORATION, ETC.,

Defendant.

Petition and Bond of Defendant, Richfield Oil Corporation, etc., for Removal to the United States District Court in and for the Southern District of California, Central Division, comes on for hearing; Robert E. Paradise appearing as attorney for the defendant. Said petition is granted. Bond approved.

[Title of Superior Court and Cause.]

ORDER FOR REMOVAL OF CAUSE TO THE
UNITED STATES DISTRICT COURT IN AND
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION.

The Defendant, Richfield Oil Corporation, a corporation, prior to the expiration of the time within which said Defendant was required to answer or otherwise plead to Plaintiff's complaint, having filed herein and presented to this Court for approval and acceptance a good and sufficient bond, conditioned as prescribed by law, and with good and sufficient surety, and having filed and presented to this Court its petition for removal of this cause from the

Superior Court of the State of California in and for the County of Los Angeles to the District Court of the United States for the Southern District of California, Central Division, and it appearing to the Court that due notice of the filing of said petition and bond for removal has been given to the adverse party prior to the filing of said petition and bond, and it appearing to the Court that this is a proper case for the removal of said cause to the District Court of the United States.

Now, Therefore, It Is Hereby Ordered and Adjudged that the said petition and bond are hereby accepted, and said bond is hereby approved and said petition for removal is hereby granted; and

It Is Further Ordered and Adjudged that this cause be and it hereby is removed to the District Court of the United States in and for the Southern District of California, Central Division, and the Clerk of this Court is hereby directed to prepare and make a transcript of the record herein and certify and transmit the same to the District Court of the United States in and for the Southern District of California, Central Division, in the manner and form as provided by law, and that all further proceedings in this Court be stayed.

Dated this 15th day of July, 1941.

GEORGE A. DOCKWEILER,
Judge.

[Endorsed]: Filed Jul. 15, 1941. L. E. Lampton,
County Clerk; by J. D. John, Deputy.

State of California

County of Los Angeles—ss. No. 465936

I. L. E. Lampton, County Clerk and ex-officio Clerk of The Superior Court in and for the County and State aforesaid, do hereby certify the foregoing copies of documents and orders consisting of:

Complaint, Notice of filing and hearing petition and Petition for Removal, Bond on Removal, Minute Order granting petition for removal, written Order for Removal to the District Court of the United States for the Southern District of California (Central Division), and Affidavit of Service by Mail, in the action of

Aaron Ferer & Sons, a Co-Partnership vs. Richfield Oil Corporation, a Corporation, to be full, true and correct copies of all of the original documents on file and/or of record in this office in said action to date.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 6th day of August, 1941.

L. E. LAMPTON,

County Clerk and ex-officio Clerk of the Superior Court
of the State of California, in and for the County of
Los Angeles.

By C. G. Albrecht, Deputy.

District Court of the United States for the Southern District of California (Central Division)

No. 1718-H

AARON FERER & SONS, a Co-Partnership,
Plaintiff,

vs.

RICHFIELD OIL CORPORATION, a Corporation,
Defendant.

CERTIFIED COPY OF RECORD ON REMOVAL.

[Endorsed]: Filed Aug. 12, 1941.

[Title of District Court and Cause.]

AMENDED COMPLAINT
DECLARATORY JUDGMENT.

Plaintiff complains and alleges:

I.

That at all times herein mentioned, plaintiff was and now is a co-partnership, comprised of Morris Ferer, Ester Peggy Ferer and Robert Irving Ferer, doing business under the fictitious name and style of Aaron Ferer And Sons, and having *it's* principal place of business in the County of Los Angeles, State of California.

II.

That at all times herein mentioned, the defendant was and now is a corporation duly organized under the laws of the State of Delaware, and having *it's* principal place of business in the County of Los Angeles, State of California.

III.

That the original complaint now on file herein was first filed in the Superior Court of the State of California in and for the County of Los Angeles in action No. 465936 of said Superior Court; that said action was ordered removed to the above entitled court by said Superior Court on the 15th day of July, 1941.

IV.

That on or about the 17th day of January, 1941, plaintiff and defendant entered into a contract in writing, a true and correct copy of which is attached hereto, marked Exhibit "A" and made a part of this amended complaint by reference, by the terms of which defendant sold and conveyed to plaintiff all of the refinery and producing facilities and equipment located on the premises therein described except for certain items thereof specifically reserved unto defendant. That there was attached to said written contract as Exhibit A thereof, a map, showing the location of all of the said refinery and producing facilities and equipment, and further showing with red markings, the items thereof which were specifically reserved unto the defendant as hereinabove alleged. That said map is omitted from Exhibit "A" attached to this amended complaint, for the reason that it is bulky; that defendant has in *it's* possession and attached to *it's* executed copy of said written contract, a true and correct copy of said map.

V.

That concurrently with the execution of said written contract, plaintiff paid to defendant the monetary consideration provided for in Paragraph 1 thereof, to-wit: the sum of Twenty-two thousand (\$22,000.00) Dollars. That immediately after the execution of said written contract, plaintiff took possession of the premises therein described

and of the refinery and producing facilities and equipment located thereon; that ever since the execution of said written contract, plaintiff has been engaged in the dismantling and removing of said refinery and producing facilities and equipment from the said premises in accordance and compliance with the terms, covenants and conditions set forth in said written contract; that plaintiff is still in possession of said premises and of said refinery and producing facilities and equipment; that in addition to the \$22,000.00 paid by plaintiff to defendant as hereinabove alleged, plaintiff has incurred an expense in the dismantling and removal of materials from said premises and in disposing of debris on said premises, all as required of plaintiff by the terms of said written contract in an amount of approximately Twenty Five Thousand (\$25,000.00) Dollars.

VI.

That there is located on the premises described in said written contract, approximately thirty seven oil wells; that said oil wells are now and for several years last past have been idle and inoperative; that plaintiff is informed and believes and upon such information and belief alleges that the derricks and tubing and rods were removed from said wells several years prior to the execution of said written contract; that there is located in each of said wells certain producing equipment and/or metal, to-wit: pipe in varying lengths and sizes comprising a portion of what is commonly known in the oil industry as the "production string" and/or as "casing"; that said pipe for convenience, is hereinafter referred to as "casing"; and that each of said oil wells is shown on the map attached to and made a part of the written contract and that none of said wells

or any of the producing equipment contained therein are circled in red to indicate that they were reserved to defendant under the terms of said written contract.

VII.

That an actual controversy and dispute exists between the parties hereto with respect to said written contract, and more particularly with respect to whether or not the conveyance to plaintiff by defendant of the refinery and producing facilities and equipment on the premises described in said written contract includes said casing and whether or not plaintiff has the right under said written contract to remove said casing from said oil wells and from said premises.

VIII.

Defendant claims and contends that said casing in said oil wells is not included in the conveyance from defendant to the plaintiff provided for in said written contract, and that plaintiff has no right to remove same or any portion thereof from said oil wells and/or from said premises. Plaintiff claims and contends that under said written contract defendant sold and conveyed to plaintiff all of the refinery and producing facilities and equipment on the premises, except certain items thereof specifically reserved: that said conveyance from defendant to plaintiff includes all metal on the premises; that said casing is metal and is producing equipment; that said casing was not specifically reserved to defendant by the terms of said written contract and that plaintiff has the right, under the terms of said written contract, to remove said casing from said oil

wells and from said premises and to retain same as part of the producing equipment purchased by plaintiff from defendant.

IX.

That plaintiff has at all times fully done and performed all of the stipulations, conditions and agreements to be performed by plaintiff under said written contract, except that plaintiff has not yet removed all of the refinery and producing facilities and equipment from said premises, and as to the portion not yet removed, plaintiff is diligently proceeding with the removal thereof. That plaintiff is, and at all times since the execution of said written contract, has been ready, willing and able to remove said casing in a manner that will comply with all of the rules and regulations, laws, orders and requirements of the Division of Oil and Gas of the State of California, and of all other governmental authorities and in strict compliance with all of the terms, covenants, agreements and provisions of said written contract.

X.

That defendant has threatened to prevent plaintiff from removing said casing from said oil wells and from said premises and has further advised plaintiff, and plaintiff believes, that even if this court declares that plaintiff has the right to remove said casing from said oil wells and said premises under the terms of said written contract, defendant will, nevertheless, still prevent plaintiff from doing so; that unless defendant is restrained from interfering with plaintiff's removal of said casing, plaintiff will suffer irreparable loss; that plaintiff has no speedy or adequate remedy at law in that it would be extremely difficult

to ascertain the amount of pecuniary compensation which would offer adequate relief; that until and unless plaintiff is allowed to proceed and remove said casing from said oil wells, it will be impossible to ascertain what quantity thereof can be removed, the salvagable value thereof, or the cost of such removal.

As A Further, Separate And Distinct Cause Of Action against defendant, plaintiff alleges:

I.

Plaintiff repeats and re-alleges by reference, as fully and completely as if herein set forth at length, all of the allegations contained in Paragraphs I, II, III, IV and VI of the plaintiff's first cause of action.

II.

That on or about the 27th day of June, 1941, defendant notified plaintiff that defendant would not deliver to plaintiff, or permit plaintiff to remove from the premises above referred to, any of said casing, and said defendant totally repudiated the said contract insofar as it related to said casing.

III.

That plaintiff has paid the consideration provided for in said written contract, and has at all times done and performed all of the stipulations, conditions and agreements to be performed by plaintiff under said written contract; that plaintiff is and at all times since the execution of said written contract, has been ready, willing and able to remove said casing in a manner that will comply with all of the rules and regulations, laws, orders and requirements of the Division of Oil and Gas of the State of California, and of all other Governmental authorities and

in strict compliance with all of the terms, covenants and agreements and provisions of said written contract.

IV.

That by reason of the premises, plaintiff has been damaged in the sum of Fifty Thousand (\$50,000.00) Dollars.

Wherefore, plaintiff, as a party to said written contract and a party interested, desires and prays for a declaration of the rights and duties of plaintiff and defendant with respect to the subject matter of this amended complaint, and in the event that this court declares that plaintiff has the right to remove said casing from said oil wells and said premises, then plaintiff prays further that defendant be restrained from interfering with plaintiff's removal thereof from said oil wells and said premises, for costs of suit herein, and for such other and further relief as may be requisite and proper to carry out and enforce such declaratory judgment.

Plaintiff further prays that in the event this court should determine that plaintiff is not entitled to the declaratory judgment prayed for under the first cause of action herein, that then plaintiff be given a money judgment against defendant in the sum of Fifty Thousand (\$50,000.00) Dollars, for costs of suit herein, and for such other and further relief as may be fair and proper.

PHILIP N. KRASNE,
CARL B. STURZENACKER,
By Philip N. Krasne
Attorneys for Plaintiff.

EXHIBIT A.

This Agreement made and entered into this 17th day of January, 1941, by and between Richfield Oil Corporation, a Delaware corporation, hereinafter referred to as "Seller," and Aaron Ferer & Sons, a co-partnership, hereinafter referred to as "Buyer",

Witnesseth:

Whereas, Seller is the owner of a certain parcel of real property in Santa Barbara County, California, more particularly described as:

That certain parcel of real property situated in the County of Santa Barbara, State of California, more particularly described as follows:

"Beginning at a pipe known as point "M" of John P. Black's survey of property of the Soladino Land Company, and running thence S. 83°23' E. 2335.1 feet to a pipe; thence N. 41°00' E. 5492.9 feet to a pipe; thence N. 64°21' W. 3197.7 feet to a post marked "M3"; thence S 41°00' W. 3564 feet to a pipe known as "M"2"; thence S 25°31' W. 1676.5 feet to a post marked "M 1" thence S. 1°06' E. 1056.0 feet to the point of Beginning. Containing 400 acres.

A deed describing said property being recorded in Book 170 of Deeds, Page 595, Official Records of Santa Barbara County.

on which parcel of property are located various refinery and producing facilities and equipment, and

Whereas, Buyer desires to purchase such equipment and facilities subject to the exceptions hereinafter set

forth and Seller is willing to sell the same to Buyer upon condition that Buyer dismantle and remove the same in accordance with the terms, covenants and conditions hereinafter contained:

1. In consideration of the payment by Buyer to Seller concurrently herewith of the sum of Twenty Two Thousand Dollars (\$22,000.00) receipt whereof is hereby acknowledged by Seller and in consideration of the performance by Buyer of the terms, covenants and provisions hereinafter contained, Seller covenants and agrees to sell to Buyer, subject to the exceptions hereinafter provided, all of the equipment and facilities now located on said land above described together with the pipe lines running from said land to a point adjacent to the railroad track one-half mile west of said land, and including the boiler, boiler house, two corrugated iron tanks, pump and loading rack located at said point. Said equipment and facilities so to be sold include generally all pipe lines, valves and fittings, buildings, boilers, pumps, engines, motors, tanks, metal and lumber now located on said land, all subject to the exceptions hereinafter provided. It is expressly understood and agreed that the following items of equipment and facilities located on said land above described are excepted from the foregoing and shall not be included in said sale nor shall the same be dismantled or removed by Buyer:

(a) 12 Cottrell type dehydrators, 3' x 8', belonging to Petroleum Rectifying Company;

(b) That certain water pump and the water storage facilities and water piping which services the Superintendent's house and cow barn;

(c) Superintendent's house (PR-1494), garage (PR-1479), frame house (PR-17318), and barn (PR1495);

(d) Six shell stills and two extra still bottoms including connections which are affixed thereto up to and including the first flange in the piping hook-up. (Previously sold to O. C. Field Gasoline Company).

(e) Brick foundations for said stills and still bottoms.

(f) Six tanks, Nos. PR-29230—Capacity 55,000 barrels

29231	"	55,000 barrels
29238	"	5,700 "
29239	"	10,050 "
29240	"	30,190 "
29241	"	37,250 "

and major suction and discharge oil pipe lines connecting such tanks approximately as indicated in red on the map attached hereto and marked Exhibit "A".

(g) Approximately 400' of 6" pipe line connecting to tank PR-29230 now being used by Camite Co.; Buyer, however, to have option of removing such line and replacing the same with 3" pipe line in as good quality and condition.

(h) Gas pipe lines connecting wells on the land above described to the superintendent's house (PR-1494).

(i) Certain equipment heretofore sold to Mid-Coast Oil Company consisting generally of brick, pipe tubes, return bends, structural steel, valves, pumps, engines and fittings, a list of which shall be furnished by Seller to Buyer upon request.

All of the foregoing equipment and facilities excluded from sale to Buyer herein (excepting the items heretofore sold to Mid-Coast Oil Company, as aforesaid) are indicated in red on the map attached to this agreement and marked Exhibit "A".

(2) Buyer agrees at its sole cost and expense to perform and

form the following work / in connection therewith shall supply all work, labor, machinery, equipment, materials and supplies, including fuel, water and electricity necessary for the performance of Buyer's work and services hereunder. Such work shall include the dismantling, removal and disposition of all equipment and facilities to be purchased by Buyer hereunder, as above provided, the removal from the property and the disposition thereof in a manner authorized by law of all oil, water and other sediment now existing in the various tanks to be purchased by Buyer hereunder, and the filling in and leveling off of all ditches and pits created by Buyer's work in removing pipe or other equipment. In addition, Buyer shall dispose of all debris (and the brick comprising the foundations under the stills remaining after the sale of a portion of such brick to the O. C. Field Gasoline Company) resulting from the performance of Buyer's work, by placing such debris and brick in the washed out portions of the creek running through the portion of the land on which the refinery equipment is now located, which disposition shall be performed in such manner that the normal course of the stream shall not be restricted. In addition, Buyer shall install a barbed wire fence, adequate for the protection of cattle, around the two large sumps on the north side of such creek. In addition, Buyer shall remove from said land all equipment, facilities

and other property now located on said land excepting only the items expressly excluded under the provisions of paragraph 1 hereinabove and in addition shall leave the land in a safe and clean condition; provided, however, that Buyer shall not be required to dismantle or remove concrete buildings or foundations located on the portion of the land now occupied by the refinery equipment.

In connection with the removal by Buyer of the loading rack, boilers and other equipment located at the railroad track one-half mile west of said land and the pipe lines connecting therewith, Buyer shall restore to their original condition the lands upon which said loading rack and other equipment and pipe lines are located, all in accordance with the provisions of that certain lease dated April 1, 1929, between Standard Oil Company of California, as Lessor, and Pan American Petroleum Company (the predecessor of Seller herein), as Lessee.

3. Buyer shall commence the performance of the foregoing work promptly after the execution of this agreement and shall complete the same not later than six (6) months following the date of this agreement.

4. Buyer expressly covenants and agrees that all of said work to be performed by Buyer shall be performed to the satisfaction of Seller and in strict compliance with all rules, regulations and other requirements of the County of Santa Barbara, State of California, and of any other governmental authorities, and including, but without limiting the generality of the foregoing, the Fire Warden and the Fish and Game Commission.

5. Buyer agrees to protect the land above described and all improvements and equipment located thereon, and the land owned by the Standard Oil Company of California (on which is now located the loading rack at the rail-

road station and the pipe lines connecting therewith), and the land owned by the Camite Company on which is located a portion of said pipe lines, and Richfield Oil Corporation, and Standard Oil Company of California, and the Casmite Company against any and all claims of laborers, mechanics and material men, and against all charges, liens and encumbrances of every kind and character arising out of or in connection with the performance by Buyer of any of Buyer's work or services hereunder, and to indemnify Richfield Oil Corporation and Standard Oil Company of California and the Camite Company and their successors and assigns of and from any and all loss, cost, damage or expense arising out of or in connection with any such claim, charge, lien or encumbrance.

6. Buyer covenants and agrees to indemnify and hold Seller and its successors and assigns harmless of and free from any and all claims, liabilities, obligations, and causes of action of every kind and nature whatsoever for injury to or death of persons, including Seller's employees, and/or damage to or destruction of property, including Seller's property and property owned by any other persons, firms or corporations, arising out of or in connection with or resulting from any and all acts or omissions of Buyer or Buyer's employees in connection with the performance by Buyer of any of the work or services hereinabove provided for.

7. Buyer covenants and agrees further to place in effect immediately and to maintain in effect at all times during the term hereof, at Buyer's sole cost and expense, the following insurance with responsible insurance carriers:

(a) Workmen's Compensation insurance covering all persons employed by Buyer in connection with the

work and services to be performed under the provisions of this agreement;

(b) Public Liability insurance in amounts of not less than \$25,000.00 for injury to or death of one person and \$50,000 for injury to or death of more than one person in any one accident;

(c) Property Damage insurance in the stated amount of \$25,000.00 for any one accident;

(d) Automotive Public Liability insurance in amounts of not less than \$25,000.00 for injury to or death of one person and \$50,000.00 for injury to or death of more than one person in any one accident; and

(e) Automotive Property Damage insurance in the Stated amount of \$5,000.00.

Such policies shall be written by insurance companies satisfactory to Seller. Certificates issued by said insurance companies issuing said insurance policies shall be deposited with Seller, which certificates shall provide that ten (10) days written notice shall be given to Seller prior to any cancellation of or material change in any such policy.

8. This agreement shall be personal to the Buyer and shall not be assigned by said Buyer, either voluntarily or involuntarily by operation of law without first securing the written approval thereto by Seller.

9. Buyer agrees to and does hereby accept full and exclusive liability for the payment of any and all taxes and contributions levied or assessed against Seller or Buyer for unemployment insurance and for old age retirement benefits, pensions, and annuities imposed by the government of the United States and by the government of any state of the United States which are measured by the wages, salaries, or other remuneration paid to persons

employed by Buyer in connection with work Buyer is required to perform and have performed under the terms of this agreement.

10. Buyer accepts full and complete responsibility for the return, payment and discharge of all property taxes on the equipment and facilities to be purchased by Buyer hereunder for the year 1941-42 and Buyer covenants and agrees to indemnify and reimburse Seller for any such taxes levied or assessed against Seller.

11. Buyer shall pay to Seller the amount of any and all taxes levied or assessed by any governmental authority in connection with the sale, delivery or removal of said equipment and facilities, expressly including but without limiting the generality of the foregoing, the amount of the California Retail Sales Tax applicable thereto; provided, however, that should Buyer purchase the same for resale, Buyer shall execute and deliver to Seller a certificate of resale in the form prescribed by the California Retail Sales Tax Act and by the regulations applicable thereto.

12. Commencing on the date of execution of this agreement, all risk of loss of or damage to all equipment and facilities to be purchased by Buyer hereunder shall be borne solely by Buyer.

13. Upon completion by Buyer, strictly in the manner hereinabove provided, of all of Buyer's duties, liabilities and obligations hereunder, Seller shall execute and deliver to Buyer a Bill of Sale, covering all equipment and facilities to be purchased by Buyer hereunder; which said Bill of Sale shall be in general terms only inasmuch as no inventory of such equipment and facilities is in existence.

It is expressly understood and agreed that Seller makes no warranties whatsoever, either express or implied, with

respect to the quantity, amount or size of any of the facilities or equipment to be purchased by Buyer hereunder or with respect to the condition or fitness of any of such equipment or facilities.

It is expressly understood and agreed that Buyer shall not be entitled to receive payment from Seller for any of Buyer's work hereunder and that the execution and delivery by Seller of said Bill of Sale, as aforesaid, shall constitute full compensation to Buyer for its work and services.

14. In the event that Buyer shall not have completed the removal of all of said equipment and facilities and performance of Buyer's work as provided in paragraph 2 hereinabove at the expiration of six (6) months following the date of this agreement, Buyer shall pay to Seller a rental for the use of said land at the rate of Fifty Dollars (\$50.00) per month until completion of such removal and of Buyer's work; provided that Buyer's use of the land shall be limited to use for the purpose of performing the work to be performed by Buyer under the provisions of paragraph 2 hereinabove.

In Witness Whereof, the parties hereto have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION

By H. H. KELLY (Signed)

Attest R.C.S.

AARON FERER & SONS, a co-partnership,

By Morris Ferer (Signed)

Attest Helen Lipsman (Signed)

[Verified.]

[Endorsed]: Filed Oct. 24, 1941.

[Title of District Court and Cause.]

NOTICE OF MOTION

To Plaintiff and to Philip N. Krasne, Esq. and Carl B. Sturzenacker, Esq., Attorneys for Plaintiff, 505 Taft Building, Los Angeles, California:

Please Take Notice that the motion of defendant Richfield Oil Corporation to dismiss the amended complaint herein will be brought on for hearing before the District Court of the United States for the Southern District of California, Central Division, on the 17th day of November, 1941, at the opening of Court on that date or as soon thereafter as counsel can be heard, which said motion will be made upon the grounds stated in said motion and will be based upon this motion and upon all the records and files in the above entitled cause.

Dated: November 6, 1941.

ROBERT E. PARADISE

WILLIAM J. DeMARTINI

By Robert E. Paradise

Attorneys for defendant Richfield Oil Corporation.

[Endorsed]: Filed Nov. 6, 1941.

[Title of District Court and Cause.]

MOTION TO DISMISS AMENDED COMPLAINT

To the Honorable United States District Court above named:

Defendant Richfield Oil Corporation moves the Court as follows:

I.

To dismiss the amended complaint and both causes of action thereof on the ground that the amended complaint fails to state a claim against Richfield Oil Corporation upon which relief can be granted for the following reason:

That the contract attached as Exhibit "A" to the amended complaint does not by its terms provide for the sale by defendant to plaintiff of the casing installed in any of the wells located upon the premises therein referred to, nor does such contract give to plaintiff the right to remove such casing from any of such wells.

II.

To dismiss the alleged first cause of action on the ground that such alleged first cause of action fails to state a claim for specific performance for the following reason:

That it appears from the amended complaint herein that plaintiff seeks a decree of specific performance of plaintiff's alleged right to dismantle and remove casing and pipe from the oil wells located upon the premises described in the amended complaint and that the said contract attached to the amended complaint as Exhibit "A" is not specifically enforceable.

Dated: November 6, 1941.

ROBERT E. PARADISE

WILLIAM J. DeMARTINI

By Robert E. Paradise

Attorneys for defendant Richfield Oil Corporation.

[Endorsed]: Filed Nov. 6, 1941.

Received copy of the within this 6 day of Nov., 1941.
Phil Krasne, Carl B. Sturzenacker, Attorneys for Plaintiff.

At a stated term, to-wit: The September Term, A. D. 1941, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 17th day of November in the year of our Lord one thousand nine hundred and forty-one.

Present:

The Honorable: Harry A. Hollzer, District Judge.

No. 1718-H Civil.

Aaron Ferer & Sons, etc.,

Plaintiff,

vs.

Richfield Oil Corporation, a corporation,

Defendant.

This cause coming on for hearing motion of defendant to dismiss amended complaint pursuant to notice filed November 6, 1941, Philip N. Krasne and Carl B. Sturzenacker, Esqs., appearing as counsel for the plaintiff; Robert E. Paradise, Esq., appearing as counsel for the defendant:

Attorney Paradise argues in support of motion and Attorney Krasne argues in opposition to motion. It is ordered that the cause as to the said motion stand submitted.

[Title of District Court and Cause.]

MEMORANDUM OF CONCLUSIONS:—

JUDGE HOLLZER—Monday, Dec. 29, 1941.

It appearing that defendant has moved to dismiss plaintiff's amended complaint and also to dismiss the first cause of action therein; and

It further appearing that the within entitled suit arises out of a certain written contract, a copy of which is attached to said amended complaint; and

It further appearing that by the first count of said amended complaint plaintiff seeks declaratory relief, more particularly, seeks a decree adjudging that under the terms of said contract the defendant sold and conveyed to plaintiff the casing in the oil wells on defendant's land described in said contract, also adjudging that plaintiff is entitled to remove said casing from said wells and premises, and also adjudging that defendant be restrained from interfering with plaintiff's removal of said casing; and

It further appearing from the terms of said contract that defendant owned the refinery and producing facilities and equipment located on said land, that plaintiff desired to buy such equipment and facilities, subject to certain exceptions more particularly set forth in said contract, that defendant was willing to sell the same upon the condition that plaintiff should dismantle and remove the same in accordance with the terms set forth in said contract; and

It further appearing from the terms of said contract that defendant thereby agreed to sell to plaintiff, subject to said exceptions, ALL of the equipment and facilities located on said land, together with the pipe lines running from said land to a certain point, and including the boiler, boiler house, two corrugated iron tanks, pump and loading

rack located at said point, said equipment and facilities thereby sold to include generally all pipe lines, valves and fittings, buildings, boilers, pumps, engines, motors, tanks, METAL and lumber located on said land; and

It further appearing from the terms of said contract, more particularly, paragraph one thereof, that certain specifically enumerated and described items of equipment and facilities were expressly excepted as not being sold to plaintiff; and

It further appearing from the terms of said contract that the casing in the oil wells was not enumerated or described among the items of equipment and facilities thus expressly excepted from said sale; and

It further appearing from the terms of said contract that plaintiff agreed at its sole expense to perform certain work, and that such work should include, among other things, the dismantling, removal and disposition of ALL equipment and facilities to be purchased by them, also the filling in and leveling off of all ditches and pits created by their work in removing pipe or other equipment; also that in addition plaintiff should remove from said land ALL equipment, facilities AND OTHER PROPERTY located on said land, EXCEPTING ONLY the items expressly excluded under the provisions of paragraph one of said contract; also that all work to be performed by plaintiff should be performed in strict compliance with all rules, regulations and other requirements of the county of Santa Barbara, the state of California and of any other governmental authorities; and

It further appearing from the terms of said contract that upon completion by plaintiff of all its duties, liabilities and obligations thereunder, defendant was required to execute and deliver to plaintiff a bill of sale covering ALL equipment and facilities to be purchased by plaintiff there-

under, which bill of sale should be in GENERAL terms only, inasmuch as no inventory of such equipment and facilities was in existence; and

It further appearing from the affidavit of one H. H. Kelly, filed herein on behalf of defendant, and from the statement made by defendant's counsel in open court, that defendant has notified plaintiff that the former contends that it did not sell to plaintiff said casing, also contends that plaintiff is not entitled to remove said casing, and has also notified plaintiff that defendant intends to and will prevent plaintiff from removing said casing; and

It further appearing that by the second count of said amended complaint plaintiff seeks damages against defendant for its alleged breach of the aforementioned contract; and

It further appearing from the statement made by defendant's counsel in open court that said contract was drafted and prepared by defendant;

The Court concludes that under the terms of said contract the defendant sold and conveyed to plaintiff the casing in the oil wells on defendant's land described in said contract.

The Court further concludes that upon the face of the pleadings it appears that defendant has wrongfully breached said contract, this conclusion, however, being reached without prejudice to the right of defendant to answer the amended complaint and establish such defense as it may have thereto.

The Court further concludes that the damages arising from such breach of contract pertain to the sale and delivery of personal property, and that plaintiff is not entitled to declaratory or equitable relief herein.

[Endorsed]: Filed Dec. 29, 1941.]

At a stated term, to-wit: The September Term, A. D. 1941, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 29th day of December in the year of our Lord one thousand nine hundred and forty-one.

Present:

The Honorable: Harry A. Hollzer, District Judge.

No. 1718-H Civil.

Aaron Ferer & Sons, a co-partnership,

Plaintiff,

vs.

Richfield Oil Corporation, a corporation,

Defendant.

For the reasons set forth in the Memorandum of Conclusions this day filed, it is ordered that defendant's motion to dismiss the amended complaint be denied, also that defendant's motion to dismiss the first count of said amended complaint be sustained without leave to amend, and that defendant serve and file its answer to the second count of the amended complaint on or before January 12, 1942.

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT.

Whereas, by order of the above entitled Court made and entered on December 29, 1941, the defendant's motion to dismiss the first cause of action of said amended complaint was sustained without leave to amend; for answer to the second cause of action of the amended complaint defendant denies and alleges as follows:

I.

Answering paragraph I of the second cause of action of the amended complaint:

A. Answering paragraph I of the first cause of action as realleged in paragraph I of the second cause of action, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained.

B. Answering paragraph IV of the first cause of action of the amended complaint as realleged in paragraph I of the second cause of action of the amended complaint, defendant admits that on or about the 17th day of January, 1941, plaintiff and defendant entered into a contract in writing, a copy of which is attached to the amended complaint and marked Exhibit "A," and defendant admits further that defendant has in its possession and attached to its executed copy of said written contract, a true and correct copy of the map referred to in said contract as Exhibit "A" thereto.

Defendant denies each and every other allegation of paragraph IV of the first cause of action of the amended complaint as realleged in paragraph I of the second cause of action of the amended complaint and in this connection defendant alleges that it has not sold or conveyed to plaintiff all or any of the refinery or producing facilities or equipment located on the premises therein described, as alleged in the amended complaint, but that by the terms of said contract, defendant merely agreed to sell to plaintiff certain of the facilities and equipment located on said premises as described in said contract; and defendant alleges that the subject matter of said contract was the particular facilities and equipment (subject to certain stated exceptions therefrom) located upon the surface of said

premises and did not include any of the casing or pipe installed in said oil wells.

C. Answering paragraph VI of the first cause of action of the amended complaint as realleged in paragraph I of the second cause of action of the amended complaint, defendant admits that there are located on the premises described in the written contract thirty-two (32) oil wells and admits that said wells are now and have for several years last past been idle and have not been operated for the production of oil therefrom; and in this connection defendant alleges that said wells are now capable, and during said period of several years last past were capable, of being operated for the production of oil therefrom. Defendant admits that the derricks and tubing and rods were removed from said wells during the year preceding the date of execution of said written contract between plaintiff and defendant. Defendant admits that there are now installed in said wells certain strings of casing and pipe in varying lengths and sizes. Defendant admits that none of said wells was circled in red on the map attached to said written contract and alleges that the subject matter of said written contract was the items of equipment and facilities (subject to certain stated exceptions therefrom) located on the surface of the premises described in said contract, as shown on said map, and did not include any subsurface equipment of the nature of the casing and pipe installed in said wells and that there was therefore no occasion for circling in red on said map any property of the nature of subsurface equipment not so included within the subject matter of said written contract. Defendant admits that none of the producing equipment located on the surface of the premises in connection with said oil wells was circled in red for the reason that such surface equipment comprising boilers, tanks and other miscellane-

ous surface equipment was included within the subject matter of said written contract and was not excluded therefrom. Defendant alleges that the casing and pipe installed in said wells was not indicated or shown on said map attached to the written contract and therefore could not be circled in red on said map. Defendant alleges that said map did not add to the subject matter of the contract any items of facilities or equipment not shown in red on such map but that said map was merely illustrative of certain of the exceptions as stated in the contract from the subject matter of the contract, to wit, the facilities and equipment located upon the surface of the premises.

Except as herein admitted, defendant denies each and every allegation of said paragraph VI of the first cause of action of the amended complaint as realleged in paragraph I of the second cause of action of the amended complaint.

II.

Answering paragraph II of the second cause of action of the amended complaint, defendant admits that on or about the 27th day of June, 1941, defendant mailed to plaintiff a letter dated June 27, 1941, a true copy of which is attached hereto and marked Exhibit "A." Except as herein admitted, defendant denies each and every allegation of paragraph II of the second cause of action of the amended complaint.

III.

Answering paragraph III of the second cause of action of the amended complaint, defendant admits that plaintiff paid to defendant the sum of Twenty-two Thousand Dollars to be performed by plaintiff under said written contract. Defendant denies that plaintiff has at all times done or performed all of the stipulations, conditions or agreements

to be performed by plaintiff under said written contract and in this connection defendant alleges that plaintiff is in default under the terms and provisions of said contract in that plaintiff has failed:

(1) To remove from said premises certain quantities of brick now located on said premises;

(2) To remove from said premises certain tanks now located on said premises; and

(3) To remove from said premises and to dispose of quantities of oil, water and other sediment existing in various tanks located on said premises;

all as required by the provisions of said written contract dated January 17, 1941.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff is and at all times since the execution of said written contract has been ready, willing and able to remove said casing in a manner that will comply with all of the rules and regulations, laws, ordinances and requirements of the Division of Oil and Gas of the State of California and of all other governmental authorities.

Except as hereinabove admitted, defendant denies each of the allegations of paragraph III of the second cause of action of the amended complaint.

IV.

Answering paragraph IV of the second cause of action of the amended complaint, defendant denies that plaintiff has been damaged in the sum of Fifty Thousand Dollars (\$50,000.00), or in any other sum whatsoever.

For a Separate, Further and Distinct Answer and Defense and by Way of a First Cause of Action of Counterclaim or Cross-Complaint, Defendant Alleges:

I.

That on or about January 17, 1941, plaintiff and defendant orally agreed to the sale by defendant to plaintiff, upon certain terms and conditions and for the sum of Twenty-two Thousand Dollars (\$22,000.00), of certain producing and refining facilities and equipment which were located upon the surface of certain premises owned by defendant. That the parties to said agreement did not intend that the subject matter of said agreement of sale should include any casing or pipe installed in any of the wells located upon said premises, which casing and pipe were not of the nature of surface facilities or equipment but were and are installed and cemented in the ground down to an average depth of approximately fourteen hundred (1400) feet. That to evidence said agreement the plaintiff and defendant executed a written contract dated January 17, 1941, a copy of which is attached to the amended complaint herein and marked Exhibit "A" hereto.

That defendant is informed and believes and therefore alleges that plaintiff at and prior to the time of the execution of said written contract did not intend to purchase the casing or pipe installed in any of the oil wells located upon said premises or intend to do or perform the abandonment work on such wells in the manner required by Section 3233 of the California Public Resources Code which would be necessary in connection with the removal from such wells of the casing or pipe installed therein.

That at no time, either before or after the execution of said written contract, did defendant intend to sell to plaintiff the casing or pipe installed in any of the oil wells located upon the premises. That said premises are owned in fee by defendant. That said wells were drilled by defendant's predecessor in interest during the period from

1916 to 1925 to depths ranging from Thirteen Hundred Fifty (1350) feet to Forty-two Hundred (4200) feet for the purpose of producing oil from a pool underlying said premises. That the production of oil from said wells was discontinued on or about October, 1925, because of a decreased market value at such time for such oil. That at the time of the cessation of such production activities the reservoir of oil underlying said premises had not been exhausted and that at such time there remained and now remains a reservoir of oil underlying said premises valued at approximately Three Million Dollars (\$3,000,000.00), which reservoir is owned by defendant. That none of said wells have ever been abandoned in the manner provided by the Statutes of the State of California or in any other manner. That during the year preceding the date of the execution of said contract dated January 17, 1941, defendant removed from said wells the derricks and tubing and rods installed therein, which removal was deemed advisable because of the worn condition thereof. At the time of the removal of such derricks, tubing and rods, the casing and pipe in such wells was left in said wells and the wells were each capped at the surface thereof in order that such wells might in the future be opened and re-entered for the production of oil therefrom. That at all times herein mentioned it was and now is the intention of the defendant to produce oil from said wells at such time as the need and demand for oil of the quality contained in said reservoir shall make such production desirable. That no casing can be removed from any oil well in California without abandonment of such well (including the plugging of the same with cement) under the provisions of Section 3233 of the Public Resources Code of the State of California. That it is physically impossible to produce oil from any well which has been abandoned in accordance

with the provisions of Section 3233 of the California Public Resources Code. That if said thirty-two (32) wells on said premises were abandoned it would be necessary for defendant to drill and install casing in thirty-two (32) additional wells. That the cost of drilling and installing casing in wells on said premises to the same depth as the present thirty-two (32) wells thereon would be an average sum of not less than Fifteen Thousand Dollars (\$15,000.00) per well or an aggregate sum of not less than Four Hundred Eighty Thousand Dollars (\$480,000.00) for thirty-two (32) wells.

II.

That in the preparation of said written contract dated January 17, 1941, the parties thereto inadvertently and by mutual mistake omitted to state that the subject matter thereof was limited to such producing and refining facilities and equipment (subject to the exceptions therein stated) which were located on the surface of said premises and that the subject matter did not include the casing or pipe installed in any of the oil wells located upon said premises. That in said respect, the written contract dated January 17, 1941, fails to express the intention and oral agreement of the parties thereto.

That plaintiff did not contend or assert that plaintiff had the right, under said written contract dated January 17, 1941, to purchase the casing and pipe installed in said wells until approximately one (1) month prior to the commencement of this action and that accordingly defendant had no knowledge of plaintiff's contention until such time.

III.

That defendant has at all times fully done and performed all of the terms, covenants, provisions, conditions and agreements to be performed by defendant under said written contract dated January 17, 1941, between the parties hereto, a copy of which is attached to the amended complaint herein and marked Exhibit "A" thereto, excepting that defendant has not executed or delivered to plaintiff a bill of sale covering any equipment or facilities to be purchased by plaintiff under such contract, nor has defendant transferred to plaintiff title to any such equipment or facilities, all as provided in paragraph 13 of said written contract, for the reason that plaintiff has not completed in the manner provided in said contract all of plaintiff's duties, liabilities and obligations thereunder, which said completion was expressly in said paragraph 13 made a condition precedent to the execution and delivery of such bill of sale and transfer of title.

For a Separate, Further and Distinct Answer and Defense and by Way of a Second Cause of Action of Counterclaim or Cross-Complaint, Defendant Alleges:

I.

Defendant herein realleges all of the allegations of paragraph I of defendant's first cause of action of counterclaim or cross-complaint as fully as though herein set forth at length.

II.

That in the preparation of said written contract dated January 17, 1941, the defendant inadvertently and by mis-

take omitted to state that the subject matter thereof was limited to such producing and refining facilities and equipment (subject to the exceptions therein stated) which were located on the surface of said premises and that the subject matter did not include the casing or pipe installed in any of the oil wells located upon said premises. That in said respect the written contract dated January 17, 1941, fails to express the intention and oral agreement of the parties thereto.

That defendant is informed and believes and therefore alleges that at the time of the execution of said written contract dated January 17, 1941, plaintiff knew or suspected that defendant did not intend to sell to plaintiff the casing or pipe installed in any of the oil wells located upon said premises and that defendant intended that the subject matter of said written contract be limited to such producing and refining facilities and equipment (subject to the exceptions therein stated) which were located on the surface of said premises; and that plaintiff knew or suspected that said written contract dated January 17, 1941, failed in such respect referred to above to express the intention and oral agreement of the parties thereto.

That plaintiff did not contend or assert that plaintiff had the right, under said written contract dated January 17, 1941, to purchase the casing and pipe installed in said wells until approximately one (1) month prior to the commencement of this action and that accordingly defendant had no knowledge of plaintiff's contention until such time.

III.

Defendant here realleges all of the allegations contained in paragraph III of defendant's first cause of action of counterclaim or cross-complaint as fully as though herein set forth at length.

Wherefore, defendant prays that plaintiff take nothing by its complaint; that said written contract of January 17, 1941, be reformed to expressly provide that the subject matter thereof is limited to the items of facilities and equipment therein described (subject to the exceptions therein stated) which are located upon the surface of said premises and that said subject matter does not include the casing or pipe installed in the oil wells located upon said premises; and that this action be dismissed with prejudice and with costs taxed in favor of the defendant.

Robert E. Paradise

Robert E. Paradise

Wm. V. DeMartini

Wm. V. DeMartini

Attorneys for Defendant, Richfield Oil Corporation, 555
South Flower Street, Los Angeles, California.

EXHIBIT "A"

June 27, 1941

Aaron Ferer & Sons

5585 East 61st Street

Los Angeles, California

Gentlemen: Atten: Mr. Morris Ferer

In your letter of June 13th, 1941 you state that it was your impression that under the agreement between us,

dated January 17, 1941, you were to have the right to salvage the casing from the various wells located upon our Casmalia property and requested our reply as to whether we would consent to your removing such casing from the wells. You again requested a written reply in your letter of June 18th.

Although we have had various discussions of this matter with you and your attorneys during the past week, we find we have neglected to make a written reply of our position as requested by you. Accordingly we reiterate our understanding and position as stated to you in the conference held on June 20th, between you and Messrs. Montgomery and Paradise and myself.

We will not consent to your removing any of the casing from any of the wells on our property. The contract does not cover or relate to the casing in the wells nor was it ever the intention that such wells be abandoned or any of the casing taken out of the wells as a part of the salvaging operations of other equipment which you are conducting on our Casmalia property. Had we intended that your work include the pulling of the casing from such wells and the abandonment of the same, the contract would have contained various provisions concerning the manner of the performance of such work, including the cleaning out of the wells, the plugging of the same with cement, the places at which pipe might be cut and other similar provisions, as well as specific reference to the requirements of the Division of Oil and Gas of the State of California; all of which provisions are uniformly inserted in any agreement we make for the pulling of casing or the aban-

donment of wells. Had the agreement contemplated the abandonment of the wells on the Casmalia property the procedure for abandonment would have been worked out with particular care inasmuch as such land has not been depleted of oil but contains a large reserve of heavy oil valued roughly at approximately \$3,000,000, which reserve would be endangered by any inadequate abandonment program.

At no time during the negotiations for this agreement did you ever indicate to us, or to any of our field representatives, that you desired to attempt to remove the casing from the wells; nor can we conceive on what basis you could have estimated that there was any casing to be recovered from such wells. At the time your representative went over the property to ascertain how much in the way of salvagable tanks and other equipment were in existence the various wells on the property had been capped and the derricks had been removed. From an inspection of the premises it would have appeared that the wells had already been abandoned, in which case there would, of course, have been no casing to salvage from them.

Your letter of June 13th states "the wells have not been used by you for a long period of time and would not appear to have any value to you whatsoever". This is entirely incorrect. As stated above, there is a valuable reserve of oil under the property. While it is true that such wells have been idle for some time it has not been our intention to abandon the same and no casing could be removed from such wells without a full abandonment operation. Shortly before the time you executed your con-

tract with us another contractor had completed the work of pulling the tubing from the various wells on the property. At that time the wells were carefully capped and care was taken that no casing be removed from such wells in order that such wells could be operated at some time in the future. As a matter of fact, some weeks ago certain of the executive officials of the Company made a trip to Casmalia for the purpose of considering the feasibility of placing all of such wells upon production in the near future.

Accordingly we must advise you that you have no right to pull any of the casing from such wells and direct you to take no steps in connection with the same.

Yours very truly,

RICHFIELD OIL CORPORATION

By H. H. KELLY

Director of Purchases

cc: Messrs. Carl B. Sturzenacker

and Philip Krasne,

505 Taft Building,

Hollywood, California.

[Verified.]

Received copy of the within Answer this 12th day of Jan., 1942. Philip N. Krasne, Attorney for Plaintiff.

[Endorsed]: Filed Jan. 12, 1942.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY JUDGMENT, OR IF DENIED, FOR BILL OF PARTICULARS.

To the defendant and to Robert E. Paradise, Esq., and William J. deMartini, Esq., Attorneys for Defendant, Please Take Notice that the motion of plaintiff Aaron Ferer and Sons for a Summary Judgment herein, or for a Bill of Particulars, should said motion for Summary Judgment be denied, will be brought on for hearing before the District Court of the United States for the Southern District of California, Central Division, on the 9th day of February, 1942, at the opening of court on that day or as soon thereafter as counsel can be heard. Said motion will be made upon affidavit attached hereto and upon all the records and files in the above entitled case.

Dated this 30th day of January, 1942.

PHILIP N. KRASNE,
CARL B. STURZENAKER,

By Philip N. Krasne
Attorneys for plaintiff
Aaron Ferer & Sons.

[Endorsed]: Filed Jan. 30, 1942.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT OR IF
DENIED, FOR BILL OF PARTICULARS.

To the Honorable United States District Court above
named:

Plaintiff Aaron Ferer & Sons moves the Court as follows:

I.

For a Summary Judgment in favor of plaintiff and against defendant as to all matters contained in plaintiff's complaint and defendant's counter-claim or cross-complaint, except the amount of damages to which plaintiff is entitled, for the following reasons:

The court has heretofore concluded:

(1) That under the terms of the written contract between the parties hereto, defendant sold and conveyed to plaintiff the casing in the oil wells on defendant's land described in said contract, and

(2) That upon the face of the pleadings it appears that defendant has wrongfully breached said contract. (This conclusion, however, being reached without prejudice to the right of defendant to answer the amended complaint and establish such defense as it may have thereto).

The defendant has no defense to its said breach and that the allegations contained in defendant's answer on file herein to the effect that plaintiff is in default under said written contract, are without merit and are in fact frivolous.

The allegations contained in defendant's counter-claim or cross-complaint purporting to establish a cause of action for reformation of said written contract are not founded upon truth or fact and cannot be supported by evidence.

Prior to the filing of a counter-claim or cross-complaint alleging that a mistake had inadvertently been made in the preparation of said written contract, and that plaintiff and defendant had entered into an oral agreement with respect to the subject matter of the sale of equipment by defendant to plaintiff, differing from the subject matter described in said written contract, defendant has admitted by its pleadings on file herein that said written contract expressed the actual agreement of the parties.

II.

In the event plaintiff's motion for Summary Judgment be denied, for a more definite statement or for a Bill of Particulars in connection with defendant's counter-claim or cross-complaint, for the following reasons, and setting forth details hereinbelow referred to:

Defendant alleged in its counter-claim or cross-complaint that on or about January 17th, 1941, plaintiff and defendant orally agreed to the sale by defendant to plaintiff of certain producing and refinery facilities and equipment, and "that the parties to said agreement did not intend that the subject matter of said agreement of sale should include any casing or pipe installed in any of *of* the wells." Defendant further alleges in substance and effect that the parties to said oral agreement intended to limit the subject matter of the sale to producing and refinery facilities and equipment which were located upon the surface of the premises owned by the defendant.

Such allegations are not averred with sufficient definiteness or particularity to enable plaintiff to prepare an answer thereto or to prepare for trial with respect thereto and are in fact alleged in the form of and as defendant's conclusions. Defendant's Bill of Particulars should allege in detail:

1. The names of the persons who entered into the alleged oral agreement.

2. What was said by said parties, if anything, concerning whether or not the casing in the wells was to be included in the subject matter of the sale.

3. What was said by the parties to the alleged oral agreement with respect to limiting the subject matter of the sale to equipment and facilities located upon the surface of defendant's premises.

4. What was said and done by defendant to show that defendant intended to exclude the casing from the subject matter of the sale or to show defendant's intention to limit the subject matter of the sale to equipment and facilities on the surface of defendant's premises.

5. What was said or done by plaintiff to show that plaintiff knew of, or suspicioned any such intentions on the part of defendant or that plaintiff intended that the subject matter of the sale was to be so limited.

Dated this 30th day of January, 1942.

PHILIP N. KRASNE,
CARL B. STURZENACKER,
By Philip N. Krasne

Attorney for Plaintiff Aaron Ferer & Sons.

[Title of District Court and Cause.]

AFFIDAVIT OF MORRIS FERER.

State of California,

County of Los Angeles,—ss.

Morris Ferer, being first duly sworn, upon oath, deposes and says:

1. That he is one of the partners of Aaron Ferer and Sons, plaintiff herein; that the remaining partners are Peggy Ferer, affiant's wife, and Robert Irving Ferer, affiant's son, and that affiant is in complete charge of the co-partnership business; that affiant carried on all of the negotiations between plaintiff and defendant pertaining to the sale by defendant to plaintiff of the equipment which is the subject matter of this litigation.

2. That the written contract executed by the parties hereto and which is the subject matter of this litigation, was drawn and prepared solely by defendant's attorney; that affiant was not represented by counsel in connection with the said written contract; that there was no mistake, mutual or otherwise, or inadvertance in the preparation of said written contract; that there was no oral contract between the parties relating to the sale by defendant to plaintiff of the producing and refining facilities and equipment covered by said written contract; that there were brief preliminary discussions leading to the execution of said written contract, but that said written contract as executed is in strict compliance with said preliminary discussions.

3. That shortly before the execution of said written contract, affiant met with one Harold Davis, an employee of defendant, and Robert E. Paradise, the defendant's

resident attorney, at defendant's premises, and that at said meeting, said Harold Davis and affiant informed said Robert E. Paradise of the desire of defendant to sell and plaintiff to purchase all of the producing and refining equipment and facilities at defendant's Casmelia property, except for certain specific items, which were then and there enumerated; that said Harold Davis requested said Robert E. Paradise to prepare a written contract covering said sale; that none of the parties at said meeting or at any other time prior to the execution of the written contract made any mention whatsoever of the casing in the oil wells at said premises or to any other specific pipe that was to be conveyed to plaintiff; that the only items of producing or refinery equipment or facilities which were specifically discussed or mentioned were the items that were to be excluded from the conveyance to plaintiff and that all of the items so specifically mentioned were excluded from the conveyance to plaintiff in the written contract as executed; that none of the parties at said meeting or at any other time prior to the execution of said written contract said anything whatsoever with respect to limiting the subject matter of the sale to equipment or facilities on the surface of the land at defendant's premises. That the words "on the surface" or any such or similar words were never even mentioned at said meeting or at any time prior to the execution of said written contract.

4. That after the meeting between said Harold Davis, Robert E. Paradise and affiant, said Robert E. Paradise

prepared and submitted to affiant a draft of a written contract, purporting to set forth the transaction as it had been outlined at said meeting and there was contained in said draft the following provision:

“Said equipment and facilities so to be sold include all pipe lines, valves and fittings, buildings, boilers, pumps, engines, motors and tanks now located on said land, all subject to the exceptions hereafter provided.”

That affiant advised said Harold Davis and said Robert E. Paradise that in his opinion said clause might be construed as a limitation upon the understanding of the parties that the subject matter of the sale was to include ALL of the producing and refinery equipment and facilities except for the items specifically reserved, and affiant suggested that in order to obviate any such construction, the said clause be re-written as follows:

“Said equipment and facilities so to be sold include all pipe lines, valves and fittings, buildings, boilers, pumps, engines, motors, tanks, METAL AND LUMBER now located on said land, all subject to the exceptions hereinafter provided.”

That affiant's suggestion was accepted by said Harold Davis and said Robert E. Paradise without demurrer or equivocation, and the words “metal and lumber” were added to the clause as aforesaid and are contained in the written contract as executed.

5. That affiant never intended that the subject matter of the sale should be limited to production and refinery

equipment and facilities ON THE SURFACE of the premises, or that the subject matter of the sale should not include the casing or pipe in the oil wells on said premises; that neither the defendant nor any of its employees, nor its attorney at any time prior to the execution of said written contract or for a long time thereafter, ever said or did anything whatsoever to indicate to affiant that the defendant intended the subject matter of the sale to be limited to production and refinery equipment and facilities ON THE SURFACE of the premises or that the subject matter of the sale should not include the casing or pipe in the oil wells on said premises; that if defendant intended that the subject matter of the sale was to be so limited or was not to include said casing or pipe, affiant had no knowledge of such intention or any suspicion thereof whatsoever.

That notwithstanding defendant's present contention that the casing or pipe in the oil wells was not to be included in the subject matter of the sale because it was not ON THE SURFACE of the premises, defendant has never questioned plaintiff's right under the written contract to remove a substantial quantity of pipe line which was underground and not ON THE SURFACE of the premises; that in truth and in fact, plaintiff was required to and did, dig trenches throughout the premises to remove such underground pipe.

6. That defendant at no time after the execution of

the written contract ever stated to affiant or even intimated that a mistake, mutual or otherwise had been made in the preparation of said written contract by inadvertence or otherwise, until defendant included allegations to that effect in its answer to the amended complaint on file herein; that in all of the discussions between affiant and defendant concerning the controversy which is the subject matter of this litigation, defendant simply contended that the written contract AS EXECUTED did not include the casing or pipe in the subject matter of the sale.

7. That affiant has never met and does not know Frank A. Morgan, one of the vice-presidents of defendant who verified the counter-claim or cross-complaint of defendant filed herein; that said counter-claim or cross-complaint in setting forth an alleged cause of action for reformation of the contract purports to show a definite oral agreement between plaintiff and defendant excluding the casing from the subject matter of the sale; said Frank A. Morgan by his verification, swore under oath that such an oral agreement was entered into with HIS OWN KNOWLEDGE; affiant is informed and believes and upon such information and belief deposes and says that the said counter-claim and cross-complaint was not verified by any of the employees of defendant who participated in the discussion of the transaction involved in this litigation for the reason that no such person could possibly swear under oath that an oral agreement as set forth in defendant's counter-claim or cross-complaint ever took place.

4. That defendant's allegation that plaintiff is in default under the terms and provisions of the written contract in that plaintiff has failed:

- "1) To remove from said premises certain quantities of brick now located on said premises;
- 2) To remove from said premises certain tanks now located on said premises; and
- 3) To remove from said premises and to dispose of quantities of oil, water and other sediment existing in various tanks located on said premises;"

(Contained in Paragraph III of defendant's answer, Page 4, Lines 20 to 29) is untrue; that the written contract provides that if plaintiff does not remove the *equipment* which is the subject matter of the sale within six months from the date of the execution of the said written contract, plaintiff shall be required to pay the defendant rental for the premises until the work has been completed, at the rate of \$50.00 a month; that defendant orally agreed to waive said rental when, for certain reasons beyond the control of plaintiff it became apparent that plaintiff would require more than six months time in which to perform said work; that the period for which the said rental was to be so waived by defendant was not definitely fixed by the oral agreement aforesaid, but plaintiff and defendant entered into a written agreement on or about the 6th day of January, 1942, wherein it was agreed that plaintiff would have until the 7th day of March, 1942, in which to complete said work, and if not completed, plaintiff would thereafter be required to pay defendant rental at the rate of \$50.00 a month until the work was completed: a copy of said written agreement is hereto at-

tached, marked Exhibit "A" and made a part of this affidavit by reference.

Morris Ferer.

Subscribed and sworn to before me this 29 day of January, 1942.

[Seal]

Carl B. Sturzenacker,

Notary Public in and for said County and State.

EXHIBIT "A".

"January 6, 1942

Richfield Oil Corporation,
555 South Flower Street,
Los Angeles, California.

Attention: Mr. Robert Paradise

Gentlemen:

Certain tanks, oil and bricks covered by the contract between yourself and the undersigned dated January 17, 1941, have not as yet been removed from your Casmelia property.

Under said contract, we were entitled to a period of six months from and after January 17, 1941, within which to remove all of the property purchased by us, and to do the cleaning up provided for. Under paragraph 14 of said contract, we were required to pay you rental at the rate of \$50.00 per month for all of the time we were on the property in excess of said six months' period.

You have heretofore verbally agreed to waive said rental payment, but the length of time for which said waiver would be effective has not been definitely fixed.

It is now understood and agreed by and between us that if we have not completed all the work to be done by us under said contract on or before March 7, 1942, we

shall pay you rental at the rate of \$50.00 per month from that date on for as long a period as is required to do all the work above referred to.

The chief reason for the delay which we have suffered is that it is necessary for us to burn several thousand barrels of oil now on the premises, and there has been some difficulty about obtaining permission to do so from the fire authorities.

We agree to use our best efforts to be off the property and have all the work we are to do completed before March 7, 1942.

It is understood and agreed that any cause of action which you have, or may feel that you have, against us by reason of any alleged failure on our part to remove the equipment and do the work required of us to be done under said contract, need not be set up by you as a cross complaint or counter claim in the action now pending in the District Court of the United States between ourselves as plaintiff and yourself as defendant (No. 1718-H), and that your failure to file a cross complaint or counter claim with respect to the subject matter referred to shall not constitute a waiver of any cause of action which you have or may claim to have with respect thereto.

Very truly yours,

AARON FERER AND SONS

By Morris Ferer

Contents Noted and Approved:

RICHFIELD OIL CORPORATION

By H. H. Kelly"

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR FOR BILL OF PARTICULARS.

To the Honorable United States Court above named:

1.

Either party to an action may move for a Summary Judgment in his favor upon all or any part of a claim, counter-claim or cross-claim. Rule 56, Rules of Civil Procedure for the District Courts of the United States.

II.

This court in a written memorandum of conclusions dated December 29th, 1941, has heretofore concluded:

1. That under the terms of the written contract between the parties hereto defendant sold and conveyed to plaintiff the casing in the oil wells on defendant's land described in said contract, and

2. That upon the face of the pleadings it appears that defendant has wrongfully breached said contract, this conclusion however, being reached without prejudice to the right of defendant to answer the amended complaint and establish such defense as it may have thereto.

Leaving aside for a moment the question of defendant's theory for reformation of the written contract alleged in the defendant's counter-claim or cross-complaint, the only possible defense to defendant's breach of the

contract is the allegation contained in Paragraph III of defendant's answer, to the effect that plaintiff is in default under the terms and provisions of the written contract for failure to remove certain brick, tanks, oil, water and other sediment from the premises. We submit that the letter agreement dated January 6, 1942, marked Exhibit A and attached to the affidavit of Morris Ferer in support of this motion, establishes conclusively that plaintiff is not in default for the failure to remove the items referred to.

Accordingly, unless the court sees merit in defendant's counter-claim or cross-complaint, it is quite obvious that defendant has no defense whatsoever to its breach of the written contract and the conclusions of this court with respect thereto should be final.

III.

The defendant, by the pleadings on file herein and by statements of counsel in open court prior to the filing of the counter-claim or cross-complaint has admitted that the written contract expresses the actual agreement of the parties. It was the defendant's position at all times prior to the filing of the counter-claim and cross-complaint that the written contract relates only to equipment ON THE SURFACE of the premises and does not convey to plaintiff the casing in the wells. It was never the position of defendant that the contract did not correctly set forth the agreement of the parties. In this connection we call the court's attention to a significant sentence in the Memorandum of Points and Authorities which defendant filed

in support of its motion to dismiss plaintiff's amended complaint:

"The intention of the parties, as disclosed by the language of the contract, was to sell the equipment located on the surface of the land, excepting certain stated items of such surface equipment." (Underlining ours.)

This sentence appears on Page 2, Lines 11 to 14 of said Memorandum of Points and Authorities.

It is apparent to us that defendant's theory of reformation, suggested for the first time in defendant's counterclaim or cross-complaint and in view of the position taken by defendant in this action prior thereto, is designed by defendant for the sole purpose of circumventing this court's previous conclusions, and that plaintiff is entitled to a Summary Judgment on all phases of this action, except as to the amount of damages that plaintiff can establish.

IV.

Either party may move for a more definite statement or for a Bill of Particulars of any matter which is not averred with sufficient definiteness or particularity. (Subd. e) Rule 12 of Rules of Civil Procedure before the District Courts of the United States.

The allegations of defendant contained in the counterclaim or cross-complaint with respect to the alleged oral

agreement and with respect to the intentions of the parties are almost entirely in the form of legal conclusions.

In the event that plaintiff's motion for Summary Judgment be denied and the question of reformation of the contract is to go to trial, plaintiff is entitled to know considerably more about the alleged oral agreement and the alleged intentions of the parties than has been alleged in the form of defendant's conclusions and defendant should be ordered to set forth in detail what was said and by whom to show that the casing in the wells was not to be included in the subject matter of the sale and to show that the parties intended to limit the subject matter of the sale to equipment and facilities located upon the surface of defendant's premises and to show that if defendant had any such intentions, plaintiff knew thereof or had reason to suspect same.

Respectfully submitted,

PHILIP N. KRASNE,

CARL B. STURZENACKER,

By Philip N. Krasne,

Attorneys for Plaintiff Aaron Ferer & Sons.

Received copy of the within Notice of Motion this 30th day of Jan. 1942. R. E. Paradise, W. J. De Martini, Attorneys for Defendant.

[Endorsed]: Filed Jan. 30, 1942.]

[Title of District Court and Cause.]

PETITION

Defendant, Richfield Oil Corporation, respectfully petitions the above entitled Court as follows:

I.

That defendant has heretofore filed an answer in the above entitled case, which answer contains two causes of action of counterclaim or cross-complaint for the reformation of the written contract described in the complaint. That there is now pending in this case a motion of the plaintiff for summary judgment or for bill of particulars, which motion is based upon the ground that "the allegations contained in defendant's counterclaim or cross-complaint purporting to establish a cause of action for reformation of said written contract are not founded upon truth or fact and cannot be supported by evidence". That plaintiff's motion for summary judgment is based upon the affidavit of Morris Ferer in which affidavit the said Morris Ferer stated that he never intended "that the subject matter of the sale should not include the casing or pipe in the oil wells on said premises" and "that if defendant intended that the subject matter of the sale was to be so limited or was not to include said casing or pipe, affiant had no knowledge of such intention or any suspicion thereof whatsoever".

II.

That certain facts necessary to controvert such statements in the affidavit of Morris Ferer are peculiarly within the knowledge of said Morris Ferer and of his business associate, T. H. Clements, who participated in the negotiations for the contract described in the amended complaint herein and that it is necessary that the depositions of Morris Ferer and T. H. Clements be taken upon oral examination for the purpose of opposing plaintiff's motion for summary judgment and for discovery and for evidence at the trial of the above entitled case.

III.

That on February 3, 1942, your petitioner gave to the plaintiff notice of the taking of depositions of Morris Ferer and T. H. Clements in the above entitled cause, which said notice, together with prooof of service thereof, is now on file with the Clerk of the above entitled Court.

IV.

That at the taking of said depositions of Morris Ferer and T. H. Clements your petitioner seeks to have the following documents produced by said witnesses:

(a) All written memoranda, records, tabulations, estimates and correspondence prepared during the years 1940 and 1941 by Morris Ferer, T. H. Clements and Aaron Ferer & Sons, or by any of their employees or agents, pertaining to the purchase by Aaron Ferer & Sons of facilities and equipment from Richfield Oil Corporation, or pertaining to the facilities and equipment to be purchased by Aaron Ferer & Sons from Richfield Oil Corporation.

(b) All written memoranda, records, tabulations, estimates and correspondence prepared during the

years 1940 and 1941 by Morris Ferer, T. H. Clements and Aaron Ferer & Sons, or by any of their employees or agents, and used by any of them in estimating the price of Twenty-two Thousand Dollars (\$22,000.00) offered to Richfield Oil Corporation by Aaron Ferer & Sons as the purchase price for such facilities and equipment.

(c) Copies of all logs and histories and drillers' reports or records of or pertaining to any of the wells located upon the land of Richfield Oil Corporation described in the contract dated January 17, 1941, attached to the amended complaint herein.

Wherefore, defendant respectfully prays that the Court make and enter its order herein granting leave for the taking of said depositions of Morris Ferer and T. H. Clements at the time and place specified in the notice referred to hereinabove, and that subpoenas commanding the production by the said Morris Ferer and T. H. Clements of the documentary evidence described hereinabove be issued and used at the taking of said depositions and for such further relief as will be just and proper.

Dated: February 4th, 1942.

ROBERT E. PARADISE and

WILLIAM J. DeMARTINI

By Robert E. Paradise

Attorneys for Defendant,

RICHFIELD OIL CORPORATION

[Endorsed]: Filed Feb. 4, 1942.

[Title of District Court and Cause.]

AFFIDAVIT OF ROBERT E. PARADISE IN
SUPPORT OF PETITION

State of California,
County of Los Angeles—ss.

Robert E. Paradise, being first duly sworn, deposes and says:

1. That he is one of the attorneys of record for Richfield Oil Corporation, defendant in the above entitled case, and is familiar with the matters therein involved.

2. That the plaintiff has filed in the above entitled action its Motion for Summary Judgment, which Motion is set for hearing before the above entitled Court on February 9, 1942. That said Motion is directed to the two causes of action of counterclaim or cross-complaint set forth in defendant's Answer on file herein. That said Motion is based upon the affidavit of Morris Ferer, in which affidavit the said Morris Ferer stated that he never intended "that the subject matter of the sale should not include the casing or pipe in the oil wells on said premises" and "that if defendant intended that the subject matter of the sale was to be so limited or was not to include said casing or pipe, affiant had no knowledge of such intention or any suspicion thereof whatsoever".

3. That the attached petition of defendant, Richfield Oil Corporation, requests the production by Morris Ferer and T. H. Clements of the following documents at the taking of their depositions:

(a) All written memoranda, records, tabulations, estimates and correspondence prepared during the years 1940 and 1941 by Morris Ferer, T. H. Clem-

ents and Aaron Ferer & Sons, or by any of their employees or agents, pertaining to the purchase by Aaron Ferer & Sons of facilities and equipment from Richfield Oil Corporation, or pertaining to the facilities and equipment to be purchased by Aaron Ferer & Sons from Richfield Oil Corporation.

(b) All written memoranda, records, tabulations, estimates and correspondence prepared during the years 1940 and 1941 by Morris Ferer, T. H. Clements and Aaron Ferer & Sons, or by any of their employees or agents, and used by any of them in estimating the price of Twenty-two Thousand Dollars (\$22,000.00) offered to Richfield Oil Corporation by Aaron Ferer & Sons as the purchase price for such facilities and equipment.

(c) Copies of all logs and histories and drillers' reports or records of or pertaining to any of the wells located upon the land of Richfield Oil Corporation described in the contract dated January 17, 1941, attached to the amended complaint herein.

4. That affiant believes that said documents, and each of them, are material to the issues raised by defendant's Answer and Counterclaim and by Motion for Summary Judgment.

Robert E. Paradise

Subscribed and sworn to before me this 4 day of February, 1942.

[Seal]

R. A. Harbaugh,

Notary Public in and for said County and State.

My Commission expires Mar. 8, 1943.

[Endorsed]: Filed Feb. 4, 1942.

[Title of District Court and Cause.]

AFFIDAVIT OF ROBERT E. PARADISE.

State of California,

County of Los Angeles—ss.

Robert E. Paradise, being first duly sworn, deposes and says:

1. That he is one of the attorneys of record for Richfield Oil Corporation, defendant in the above entitled case, and is familiar with the matters therein involved.

2. That the plaintiff has filed in the above entitled action its Motion for Summary Judgment, which Motion is set for hearing before the above entitled Court on February 9, 1942. That said Motion is directed to the two causes of action of counterclaim or cross-complaint set forth in defendant's Answer on file herein. That said Motion is based upon the affidavit of Morris Ferer, in which affidavit the said Morris Ferer stated that he never intended "that the subject matter of the sale should not include the casing or pipe in the oil wells on said premises" and "that if defendant intended that the subject matter of the sale was to be so limited or was not to include said casing or pipe, affiant had no knowledge of such intention or any suspicion thereof whatsoever."

3. That certain facts necessary to controvert such statements in the affidavit of Morris Ferer are peculiarly within the knowledge of the said Morris Ferer and his business associate, T. H. Clements, and that for such reason the defendant cannot present by affidavit certain facts essential to justify defendant's opposition to plaintiff's Motion for a Summary Judgment.

4. That affiant deems it necessary and advisable that the depositions of Morris Ferer and T. H. Clements be taken and that such depositions be verified and filed in this action in order that the Court, in ruling upon plaintiff's Motion for Summary Judgment, may consider such depositions and have before it facts relevant and material to the issues between plaintiff and defendant.

Robert E. Paradise

Subscribed and sworn to before me this 3 day of February, 1942.

[Seal]

R. A. Harbaugh,

Notary Public in and for said County and State.

My Commission expires Mar. 8, 1943.

Received copy of the within this 3rd day of February, 1942. Sturzenaker & Krasne (R. P.)

[Endorsed]: Filed Feb. 4, 1942.

[Title of District Court and Cause.]

ORDER

Upon reading and filing the petition of Richfield Oil Corporation and good cause appearing therefor,

It Is Hereby Ordered, Adjudged and Decreed that Defendant is hereby granted leave to take the depositions of Morris Ferer and T. H. Clements and that subpoenas commanding the production by the said Morris Ferer and

T. H. Clements of the following described documentary evidence be used at the taking of said depositions:

(a) All written memoranda, records, tabulations, estimates and correspondence prepared during the years 1940 and 1941 by Morris Ferer, T. H. Clements and Aaron Ferer & Sons, or by any of their employees or agents, pertaining to the purchase by Aaron Ferer & Sons of facilities and equipment from Richfield Oil Corporation, or pertaining to the facilities and equipment to be purchased by Aaron Ferer & Sons from Richfield Oil Corporation.

(b) All written memoranda, records, tabulations, estimates and correspondence prepared during the years 1940 and 1941 by Morris Ferer, T. H. Clements and Aaron Ferer & Sons, or by any of their employees or agents, and used by any of them in estimating the price of Twenty-two Thousand Dollars (\$22,000.00) offered to Richfield Oil Corporation by Aaron Ferer & Sons as the purchase price for such facilities and equipment.

(c) Copies of all logs and histories and drillers' reports or records of or pertaining to any of the wells located upon the land of Richfield Oil Corporation described in the contract dated January 17, 1941, attached to the amended complaint herein.

Dated this 4th day of February, 1942.

H. A. Hollzer

United States District Judge.

[Endorsed]: Filed Feb. 4, 1942.

[Title of District Court and Cause.]

NOTICE OF TAKING DEPOSITION.

To the Plaintiff, Aaron Ferer & Sons, and to Philip N. Krasne, Esq. and Carl B. Sturzenacker, Esq., Attorneys for the Plaintiff:

You, and each of you, are hereby notified that the deposition of David Zeidenfeld will be taken upon oral examination before Ross Reynolds, a Notary Public in and for the State of California, or before any other Notary Public in and for the State of California, on the 13th day of February, 1942, at 10:00 A. M. at Room 1221 Richfield Building in Los Angeles, California; that the address of said person is as follows:

David Zeidenfeld

1027 South Crescent Heights Blvd.

Los Angeles, California

that said deposition will be taken for the purpose of discovery and for use in evidence at the hearing on plaintiff's motion for summary judgment and in the trial of the above named action.

Dated this 12 day of February, 1942.

ROBERT E. PARADISE and

WILLIAM J. DeMARTINI

By Robert E. Paradise

ROBERT E. PARADISE

Attorneys for Defendant, Richfield Oil Corporation

Received copy of the within this 12th day of Feb., 1942.
Philip N. Krasne, Attorney for Pltff.

[Endorsed]: Filed Feb. 12, 1942.

[Title of District Court and Cause.]

AFFIDAVIT OF ROBERT E. PARADISE.

State of California,

County of Los Angeles—ss.

Robert E. Paradise, being first duly sworn, deposes and says:

That he is one of the attorneys of record for Richfield Oil Corporation, defendant in the above entitled case, and is familiar with the matters therein involved.

That the plaintiff has filed in the above entitled action its Motion for Summary Judgment, which Motion is set for hearing before the above entitled Court on February 16, 1942. That said Motion is directed to the two causes of action of counterclaim or cross-complaint set forth in defendant's Answer on file herein. That said Motion is based upon the affidavit of Morris Ferer, in which affidavit the said Morris Ferer stated that he never intended "that the subject matter of the sale should not include the casing or pipe in the oil wells on said premises" and "that if defendant intended that the subject matter of the sale was to be so limited or was not to include said casing or pipe, affiant had no knowledge of such intention or any suspicion thereof whatsoever."

That certain facts necessary to controvert such statements in the affidavit of Morris Ferer are within the knowledge of David Zeidenfeld, a former employee of the plaintiff herein. That affiant is informed and believes and

therefore states that the said David Zeidenfeld participated in the transaction between plaintiff and defendant referred to in this cause. That affiant was informed on February 11, 1941 of the extent of the said David Zeidenfeld's participation in such transaction. That for such reason the defendant cannot present by affidavit certain facts essential to justify defendant's opposition to plaintiff's Motion for Summary Judgment.

That affiant deems it necessary and advisable that the deposition of David Zeidenfeld be taken and that such deposition be verified and filed in this action in order that the Court, in ruling upon plaintiff's Motion for Summary Judgment, may consider such deposition and have before it facts relevant and material to the issues between plaintiff and defendant.

Robert E. Paradise

Subscribed and sworn to before me this 12th day of February, 1942.

[Seal]

Chas. A. Root,

Notary Public in and for said County and State.

Received copy of the within this 12 day of Feb., 1942.
Philip N. Krasne, Attorney for Pltf.

[Endorsed]: Filed Feb. 12, 1942.

At a stated term, to-wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 12th day of February in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable Harry A. Hollzer, District Judge.

No. 1718-H Civil

Aaron Ferer & Sons,

Plaintiff,

vs.

Richfield Oil Corporation, a corporation,

Defendant.

This cause now coming before the Court *ex parte*; Robert E. Paradise, Esq., appearing as counsel for the defendant, and Philip Krasne, Esq., appearing as counsel for the plaintiff;

Attorney Paradise asks for a continuance of hearing on plaintiff's motion for Summary Judgment, now set for hearing on February 16, 1942, or that an Order be made shortening time for taking and filing of deposition of one David Zeidenfeld, and Attorney Krasne states that the plaintiff objects to a continuance of hearing on motion for Summary Judgment but does not oppose an Order shortening time to take deposition, and it is ordered that said deposition be taken on February 13, 1942, at 10 A. M. at the office of Attorney Paradise and be filed by February 16, 1942.

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT, OR
FOR BILL OF PARTICULARS.

State of California,
County of Los Angeles—ss.

F. L. McGahan, being first duly sworn, deposes and says:

That he is now and at all times mentioned herein was employed by Richfield Oil Corporation as Supervisor of Storehouses. That at the times hereinafter mentioned his office was located at Richfield Oil Corporation's Richville Camp near Long Beach, California. That his duties include the notifying of prospective bidders when the Management of Richfield Oil Corporation has determined that any of Richfield's old or salvage equipment is to be sold.

That Affiant was acquainted with David Zeidenfeld, who was employed by Aaron Ferer & Sons, during the year of 1940. That the said David Zeidenfeld had, on various occasions, visited Affiant in Affiant's office and discussed the purchase by Aaron Ferer & Sons of salvage equipment belonging to Richfield Oil Corporation at various locations. That during August or September of 1940 Affiant told David Zeidenfeld that Richfield Oil Corporation was planning on taking bids for and selling certain "surface equipment" located at Richfield's Casmalia property, and told David Zeidenfeld further that Affiant did not have specific information at that time as to what items of surface equipment were located on the property. Affiant inquired of David Zeidenfeld whether Aaron Ferer &

Sons would be interested in submitting a bid for such equipment.

That subsequent to the last mentioned conversation with David Zeidenfeld, Affiant had a conversation with Morris Ferer. That the said Morris Ferer asked Affiant what equipment Richfield had at Casmalia and what equipment Richfield desired to sell. That Affiant told the said Morris Ferer that the equipment to be sold was "surface equipment" which generally included tanks, boilers, pipe lines, valves and fittings, and that Affiant had no specific inventory of such equipment at that time but that Affiant would have a better idea of the specific items and quantities after Affiant had made a further investigation of the property. Affiant told Morris Ferer that Affiant intended to visit the Casmalia property in the near future for the purpose of finding out more specifically what was located there. Affiant told Morris Ferer that when Affiant had obtained such specific information, it would be available to Morris Ferer. That Affiant told Morris Ferer that he would be glad to meet Morris Ferer at the Casmalia property at any time and take him around such property and show him what equipment was available for sale. That Affiant told Morris Ferer that it would be satisfactory for Morris Ferer to examine the property. That Affiant did not tell Morris Ferer that Mr. Ferer would have to make his own investigation of the property, or that Mr. Ferer would have to find out for himself what was available for sale. That Affiant did not tell the said Morris Ferer on that occasion, or at any other occasion, that everything which Richfield had on the property would be sold.

That subsequently and some time during the last week of November or the first week of December of 1940 the said David Zeidenfeld again visited Affiant at Affiant's Richville office. That subsequent to Affiant's conversation with Morris Ferer and prior to such second visit by David Zeidenfeld at the Richville office, Affiant had made a further inspection of the Casmalia property and had made written memoranda and estimates of the equipment which was available for sale and of the approximate tonnage of such equipment. That at such second visit of David Zeidenfeld, Affiant told him that he had more information as to the equipment which Richfield Oil Corporation had available and was willing to sell and Affiant showed David Zeidenfeld Affiant's penciled memoranda and estimates. That attached hereto and marked Exhibit "A" are photostatic copies of the penciled memoranda and estimates which Affiant showed to David Zeidenfeld. That Affiant and David Zeidenfeld discussed the items shown on the memoranda and estimates and, in answer to David Zeidenfeld's inquiry, Affiant told him that Affiant's estimate of the over-all tonnage of the equipment to be sold was approximately fifteen hundred (1500) tons, of which quantity approximately nine hundred and twenty (920) tons represented the pipe lines, and that the remaining five hundred and eighty (580) tons represented the other surface equipment including boilers, pumps, valves and fittings and refinery equipment. That in said conversations between Affiant and David Zeidenfeld the terms "pipe lines" and "pipe" were used interchangeably by both Affiant and David Zeidenfeld as referring to the same thing. That Affiant also told David Zeidenfeld that

his estimate of the tonnage of the pipe lines might not be exact since Richfield had only old records, including a map, of what pipe lines were originally installed on the property and that he did not know whether some of the pipe lines shown on such records or on the map had since been removed or whether any additional pipe lines had been placed on the land which did not appear on such records or such map. That the map which Affiant referred to in said conversation is the same map, a copy of which is attached to the contract between Aaron Ferer & Sons and Richfield dated January 17, 1941. That Affiant did not state at the conversation, nor did he tell David Zeidenfeld or Morris Ferer at any other conversation, that Richfield was willing to sell "everything" or "all equipment on the property" with the exception of certain items. That Affiant did tell David Zeidenfeld at such conversation that Richfield was willing to sell all "surface equipment" with the exception of certain tanks, shell stills, dehydrators, pipe lines and other equipment. That casing installed in oil wells is not "surface equipment" and is never referred to as "surface equipment." That the casing installed in oil wells is not a "pipe line" and is never referred to as a "pipe line." That there was no mention in said conversation with David Zeidenfeld, or in any other conversation with David Zeidenfeld or Morris Ferer, of any wells upon the Casmalia property or of the casing in any wells upon such property.

That subsequently and during the second week of January, 1941, Affiant attended a meeting in the office of Mr. Paradise, one of the attorneys for Richfield Oil Corporation, at which meeting there were also present Messrs.

Morris Ferer, T. H. Clements, Harold David and Paradise. That at said meeting Mr. Morris Ferer stated that he would like to have the words "metal and lumber" added to the proposed contract. He was asked for the reason for his request. Mr. Ferer then read aloud the proposed list of the items which had been prepared, to wit, "pipe lines, valves and fittings, buildings, boilers, pumps, engines, motors, and tanks" and Mr. Ferer stated that there was additional material which he understood was covered by the sale and which were not included in such list. Mr. Ferer then stated that such additional material was loose metal and lumber lying around the property, a large pile of wire line and cast iron and the metal supports for the various stills and the metal supports for overhead lines in the refinery. Mr. Ferer stated that none of these items were included in the list which he had read and that he thought such items would be included if the words "metal and lumber" were added. Mr. Davis then stated that it would be satisfactory to add the words "metal and lumber" since it was his understanding that Mr. Ferer was to purchase the items he had mentioned. There was no mention at that meeting, or at any other meeting, by anyone present of the casing in any of the oil wells on the property. That none of the casing can be removed from an oil well without abandonment of such well in accordance with the requirements of the Division of Oil and Gas of the State of California. That there was no mention at that meeting, or at any other meeting, by anyone present of the abandonment of any of the oil wells on the property.

That Affiant at all times intended that the equipment to be sold from the Casmalia property be limited to surface equipment. That Affiant never intended that the equipment to be sold from the Casmalia property include the casing in any of the oil wells on the property. That Affiant never intended that any of the oil wells upon the property be abandoned. That the only mention, at the meeting in Mr. Paradise's office referred to above, of any of the oil wells on the property was when Mr. Davis laid upon the desk a large map of the property and pointed out on the map the gas line running from the superintendent's house to one of the wells on the property, which Mr. Davis said should be excluded from the sale in order that the superintendent's house might be continued to be served with gas from such well. Mr. Davis also stated at said meeting that the contract should contain a provision excluding the gas line and perhaps some extensions of it to additional wells.

F. I. McGahan

Subscribed and sworn to before me this 17 day of February, 1942.

[Seal]

R. A. Harbaugh,

Notary Public in and for said County and State.

My Commission Expires March 8, 1943.

Exhibit "A" Omitted—Same as Defendant's Exhibit "B" at Trial.

Received copy of the within this 17th day of Feb., 1942. Philip N. Krasne (R. P.).

[Endorsed]: Filed Feb. 17, 1942.

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT, OR
FOR BILL OF PARTICULARS.

State of California,
County of Los Angeles—ss.

H. H. Kelly, being first duly sworn, deposes and says:

That he is now and at all times herein mentioned was employed by Richfield Oil Corporation as Director of Purchases. That his duties and authority include the making of sales and the execution of contracts for the sale of old and salvage equipment belonging to Richfield Oil Corporation. That Harold Davis is employed in the Purchasing Department of Richfield Oil Corporation but that Harold Davis has no authority to make sales of such nature or to execute contracts of sale of such nature.

That Affiant executed on behalf of Richfield Oil Corporation the written contract dated January 17, 1941 between Richfield Oil Corporation and Aaron Ferer & Sons. That several months prior to the execution of said written contract, Affiant notified Harold Davis that the Management had determined to sell certain equipment belonging to Richfield located on the Casmalia property and requested the said Harold Davis to arrange for getting bids for such sale from prospective purchasers. That at no time, either before or after the execution of said contract between Richfield and Aaron Ferer & Sons, did Affiant intend to sell to Aaron Ferer & Sons the casing in any of

the oil wells located upon the Casmalia property, nor did Affiant intend that any of the wells upon such property be abandoned. That said Casmalia property is owned in fee by Richfield Oil Corporation. That Affiant was and is informed that said wells were drilled by the predecessor in interest of Richfield Oil Corporation during the period from 1916 to 1925 to depths ranging from thirteen hundred fifty feet (1350') to forty-two hundred feet (4200') for the purpose of producing oil from a pool underlying said property. That Affiant was and is informed that the production of oil from said wells was discontinued on or about October of 1925 because of a decreased market value at such time for such oil. That Affiant was and is informed that at the time of the cessation of such production activity, the reservoir of oil underlying such property had not been exhausted and that at such time there remained and now remains a reservoir of oil underlying said property valued at approximately Three Million Dollars (\$3,000,000.00), which reservoir is owned by Richfield Oil Corporation. That said wells are not now abandoned and Affiant is informed by the Production Department of Richfield Oil Corporation that said wells may be operated for the production of oil therefrom. That during the year preceding the date of the execution of the contract dated January 17, 1941 between Richfield and Aaron Ferer & Sons, Richfield Oil Corporation removed from said wells the derricks and the tubing and rods installed therein, which removal was deemed advisable because of the worn condition thereof. That at

the time of the removal of such derricks, tubing and rods the wells were not abandoned and the casing was left in such wells and the wells were each capped at the surface thereof in order that such wells might in the future be opened and re-entered for the production of oil therefrom. That at all times, both before and after the execution of said contract on January 17, 1941, it was and now is the intention of Richfield Oil Corporation to produce oil from said wells at such time as the need and demand for oil of the quality contained in said reservoir shall make such production desirable. That Affiant was and is informed by the Production Department of Richfield Oil Corporation that no casing can be removed from any oil well in California without abandonment of such well (including the plugging of the same with cement) under the provisions of Section 3233 of the Public Resources Code of the State of California; that it is physically impossible to produce oil from any well which has been abandoned in accordance with such provisions of the California Public Resources Code; that if the thirty-two (32) wells on said Casmalia property were abandoned, it would be necessary for Richfield Oil Corporation to drill and install casing in thirty-two (32) additional wells; that the cost of drilling and installing casing in wells on said property to the same depths as the present thirty-two (32) wells thereon, would be an average sum of not less than Fifteen Thousand Dollars (\$15,000.00) per well, or an aggregate sum of not less than Four Hundred Eighty Thousand Dollars (\$480,000.00) for such thirty-two (32) wells.

That the six (6) large storage tanks now located upon the property are surface equipment which was excluded from the sale to Aaron Ferer & Sons for the reason that the Management of Richfield Oil Corporation at all times both prior to and subsequent to the execution of said contract with Aaron Ferer & Sons intended to use such tanks for the purpose of storing oil when the wells on such property should be restored to production.

That Affiant examined carefully the written contract dated January 17, 1941 before he executed the same on behalf of Richfield Oil Corporation. That at such time it was Affiant's understanding that the phrase "metal and lumber" appearing in said written contract referred only to loose scrap metal and loose lumber lying upon the surface of the Casmalia property and to the metal supports for certain of the refinery structures. That Affiant did not intend or understand that said phrase "metal and lumber" should include the casing in any of the oil wells on any of the property or that the subject matter of the sale include anything other than the surface equipment on the property.

H. H. Kelly

Subscribed and sworn to before me this 13th day of February, 1942.

[Seal]

Chas. A. Root,

Notary Public in and for said County and State.

Received copy of the within this 17 day of Feb., 1942.
Philip N. Krasne (R. P.)

[Endorsed]: Filed Feb. 17, 1942.

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT, OR
FOR BILL OF PARTICULARS.

State of California,
County of Los Angeles—ss.

Harold Davis, being first duly sworn, deposes and says:

That he is and at all times herein mentioned was employed in the Purchasing Department of Richfield Oil Corporation. That among his duties are arranging the preliminary negotiations for the sale by Richfield Oil Corporation of its salvage and worn-out equipment. That on or about the month of August, 1940, he notified Mr. McGahan, the Storehouse Supervisor of Richfield Oil Corporation, that the Management had decided to sell certain of the surface equipment at Casmalia and requested Mr. McGahan to notify prospective bidders that such surface equipment, with certain exceptions, would be made available for sale. That shortly thereafter Affiant asked Mr. R. D. Montgomery, head of the Exploitation Department of Richfield Oil Corporation, which, if any, of the surface equipment at Casmalia Mr. Montgomery desired to have left remain on the property. Mr. Montgomery informed Affiant that he wanted to have the large storage tanks remain on the property in case the Management should determine to open up for production any of the wells on the land.

That on or about January 8, 1941, a meeting was held in Affiant's office in the Richfield Building, at which were present Messrs. Morris Ferer and T. H. Clements. At that meeting Mr. Clements stated that he and Mr. Ferer wanted to purchase the six (6) large storage tanks as a part of the transaction and he asked Affiant why such tanks were excluded. Affiant stated that he had taken the matter up with the Management and that the Management desired to have the tanks excluded in order that they might be used for storage purposes if Richfield should decide to open up the field for production. That Affiant also stated that there was certain oil in one of the excluded tanks that was being stored by Richfield for the Casmite Company. That Affiant did not state to Mr. Clements or Mr. Ferer at that meeting, or at any other meeting, that the tanks were excluded in order that they might be moved to Maricopa for production purposes.

That Affiant was present at a meeting in the office of Mr. Paradise, one of the attorneys for Richfield Oil Corporation. That there were also present at that meeting Messrs. Morris Ferer, Clements, McGahan and Paradise. ~~That the meeting had been called for the purpose of discussing the terms of the proposed contract between Richfield and Aaron Ferer & Sons.~~ That during the meeting Mr. Ferer stated that he objected to the list of equipment which had been prepared. That Mr. Ferer read the list to those present as including "pipe lines, valves and fittings, buildings, boilers, pumps, engines, motors and tanks" and stated that the list was not sufficiently inclusive because

there were other items which he expected to purchase which were not included in the list. That Affiant inquired what such other items were and Mr. Ferer stated that they were loose lumber and metal lying around the property at various locations, including a scrap pile of wire line and cast iron. That Mr. Ferer also mentioned the metal supports for the stills around the refinery and the metal supports for overhead lines at the refinery and stated that those items were not included in the list which he had read. That Mr. Ferer then inquired how much of the metal supports for the refinery shell stills would be left by the Casmite Company when it removed the shell stills from the property, which shell stills were excluded from the sale to Aaron Ferer & Sons. That Affiant telephoned the Casmitè Company from Mr. Paradise's office and, at the conclusion of the telephone conversation, told Mr. Ferer and Mr. Clements the points at which the Casmite Company would cut the stills from the metal supports. That Mr. Ferer or Mr. Clements stated that they expected to get the remaining metal supports attached to such stills. That Affiant stated that it was his understanding that Mr. Ferer and Mr. Clements were to get such loose metal and the other items which Mr. Ferer had mentioned and that it was satisfactory to include the words "metal and lumber" in the contract. That neither Mr. Ferer nor Mr. Clements, nor any other person present at the meeting mentioned the casing in any of the wells on the property. That Mr. Ferer did not refer to the casing in any of the wells on the property when Affiant asked Mr. Ferer what items Mr. Ferer was referring to when he requested the inclusion of the phrase "metal and lumber." ~~That Affiant~~

did not intend that there be included in the sale, the casing in any of the wells on the property.

That at said meeting in the office of Mr. Paradise, Affiant pointed out to Mr. Ferer and Mr. Clements, on a large map of the property, the gas line from the superintendent's house to one of the wells on the property and stated that Richfield also desired to exclude such line from the sale in order that the superintendent's house could continue to receive gas from such well. Affiant also stated that if there was not gas in such well sufficient to serve the superintendent's house that it might be necessary also to exclude gas lines running to other wells on the property in order to insure a sufficient gas supply to the superintendent's house. That the map which Affiant brought to the meeting was a copy of the same map which is attached to the contract between Richfield and Aaron Ferer & Sons.

That at none of the meetings or conversations with either Mr. Ferer or Mr. Clements was there any mention whatsoever of the casing in any of the oil wells on the property or of the abandonment by Aaron Ferer & Sons of any of the oil wells on the property.

Harold Davis

Subscribed and sworn to before me this 13th day of February, 1942.

[Seal]

Chas. A. Root,

Notary Public in and for said County and State.

Received copy of the within this 17th day of Feb., 1942.
Philip N. Krasne (R. P.).

[Endorsed]: Filed Feb. 17, 1942.

[Title of District Court and Cause.]

FURTHER AFFIDAVIT IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT, OR FOR BILL OF PARTICULARS.

State of California,
County of Los Angeles—ss.

F. I. McGahan, being first duly sworn, deposes and says:

That prior to January 17, 1941, the date of the execution of the contract between Richfield and Aaron Ferer & Sons, Affiant had two or three conversations with T. H. Clements in Affiant's Richville office concerning Richfield's proposed sale of equipment from its Casmalia property. That Affiant did not state at any of such conversations with Mr. Clements that everything on the property would be sold with certain exceptions. That at the first or second conversation with the said T. H. Clements, Affiant stated to him that the "surface equipment" with certain exceptions would be sold. That Affiant did not state to Mr. Clements at any conversation with Mr. Clements that Richfield Oil Corporation or its Production Department was planning on taking any storage tanks from the Casmalia property and using them at Maricopa.

That the said T. H. Clements did not at any of Affiant's conversations with T. H. Clements ever ask Affiant for any inventory of the equipment and facilities at Casmalia

which were to be sold. That at Affiant's first conversation with Mr. Clements concerning the proposed sale, which conversation occurred about the first of November, 1940, Affiant told Mr. Clements that he had no inventory of the facilities or equipment at Casmalia but that Affiant planned on making an inspection of the Casmalia property and that Affiant would be able to furnish Mr. Clements, some time before any sale would be made, with more specific information as to what equipment and facilities would be sold. That the said T. H. Clements did not at any time thereafter request of Affiant any inventory of the equipment or facilities, or any information as to what items of facilities or equipment were available for sale, or any information as to the nature or quantity of any thereof.

F. I. McGahan

Subscribed and sworn to before me this 18th day of February, 1942.

[Seal]

Chas. A. Root,

Notary Public in and for said County and State.

Received copy of the within this 18th day of Feb., 1942. Philip N. Krasne (R. P.).

[Endorsed]: Filed Feb. 19, 1942.

At a stated term, to-wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 24th day of February in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable Harry A. Hollzer, District Judge.

No. 1718-H Civil

Aaron Ferer & Sons,

Plaintiff,

vs.

Richfield Oil Corporation, a corporation,

Defendant.

This cause coming on for further hearing on motion of plaintiff for Summary Judgment, or if denied, for a Bill of Particulars, pursuant to notice filed January 30, 1942; Philip N. Krasne and Carl B. Sturzenacker, Esqs., appearing as counsel for the plaintiff; Robert E. Paradise, Esq., appearing as counsel for the defendant; and H. A. Dewing, Court Reporter, being present and reporting the proceedings:

At 10:40 A. M. Attorney Paradise requests that certain corrections be made to defendant's answer and said corrections are made by the Court.

Attorney Paradise argues further in opposition to said motion, and Attorney Krasne argues further in support of said motion.

At 12:10 P. M. court recesses to 3 P. M. in this case. At 3:25 P. M. court reconvenes herein, and all being present as before, Attorney Krasne resumes argument in support of said motion and Attorney Paradise argues further in opposition to said motion. Attorney Paradise asks that the defendant be allowed to file motion for Summary Judgment. Attorney Krasne makes a statement in opposition thereto as Bill of Particulars has not been furnished to plaintiffs on defendant's counter-claim.

Attorney Paradise makes a statement.

It is ordered that the demand of plaintiffs for a Bill of Particulars is deemed covered by the statement of defendant's counsel and shall be ruled as complied with by the statement in open court and plaintiffs are allowed seven days to file reply to defendant's counter-claim, and it is further ordered that both sides file, within seven days, an outline of the points of their argument, and that the cause be, and it hereby is, continued to March 4, 1942, for submission on motion of plaintiffs for Summary Judgment, the defendant to file its motion of Summary Judgment in meantime if it is deemed advisable.

[Title of District Court and Cause.]

REPLY.

Comes now the above named plaintiff and answering the alleged first cause of action set forth in defendant's counter claim and cross complaint on file herein, admits, denies and alleges as follows:

I.

Denies that on or about January 17, 1941, or at any time, plaintiff and defendant orally agreed to the sale by defendant to plaintiff of producing and refining facilities and equipment which were located on the premises owned by defendant. Denies that plaintiff and defendant entered into any oral agreement with respect to the producing and refining facilities and equipment, which are the subject of the sale provided for in the written contract between plaintiff and defendant dated January 17, 1941, a copy of which is attached to the amended complaint on file herein, and alleges that the only agreement made or entered into between plaintiff and defendant with respect to the sale by defendant to plaintiff of producing and refining facilities and equipment is the said written contract dated January 17, 1941.

Denies that plaintiff and defendant did not intend that the subject matter of the sale of producing and refining facilities and equipment by defendant to plaintiff should include any casing or pipe installed in any of the wells located upon said premises, and alleges that plaintiff and defendant did intend that the subject matter of said sale should include the casing or pipe installed in all of the wells located upon said premises.

Denies that plaintiff at and prior to the time of the execution of said written contract did not intend to purchase the casing or pipe installed in any of the oil wells located upon said premises, and denies that plaintiff did not intend to do or perform the abandonment work on said wells in the manner required by Section 3233 of the California Public Resources Code, and alleges that plaintiff at and prior to the time of the execution of the written contract did intend to purchase the casing or pipe installed in all of the said oil wells and did intend to do or perform the abandonment work on such wells in the manner required by law and by the terms of the said written contract.

Denies that defendant did not intend to sell plaintiff the casing or pipe installed in the said oil wells, and alleges that defendant prior to and at the time of the execution of said written contract did intend to sell to plaintiff said casing and pipe installed in all of said oil wells.

Plaintiff has no information or belief concerning the value of the alleged reservoir of oil underlying defendant's premises, and basing this denial upon such lack of information or belief denies that same has a value of approximately Three Million Dollars, or any value whatsoever.

Admits that during the year preceding the date of the execution of said written contract dated January 17, 1941, defendant removed from said wells the derricks, tubing and rods installed therein, but denies that such removal was deemed advisable because of the worn condition there-

of, and alleges that such removal was deemed advisable because defendant had no intentions of ever operating said wells.

Denies that said wells were ever capped at the surface in order that such wells in the future might be re-opened and re-entered for the production of oil therefrom, and alleges that defendant had no intention of re-opening and re-entering said wells, or any of them, for the production of oil.

Denies that defendant at all or any of the times mentioned in defendant's counter claim and cross complaint intended to produce oil from such wells at any time.

Plaintiff has no information or belief concerning defendant's allegations of the cost of drilling and installing casing in wells on the premises, and basing its denial upon the lack of such information and belief, denies that the cost thereof would be not less than Fifteen Thousand Dollars per well, and denies that the cost in the aggregate would be not less than Four Hundred and Eighty Thousand Dollars.

Denies that in the preparation of said written contract dated January 17, 1941, the parties thereto inadvertently or otherwise, or by mistake or otherwise, omitted to state that the subject matter thereof was limited to such producing and refining facilities and equipment as were located on the surface of said premises and/or that the subject matter did not include the casing or pipe installed in any of the oil wells located upon said premises, and alleges

that said written contract dated January 17, 1941, properly and correctly sets forth the intentions of the parties thereto, and alleges that it was the intention of the parties thereto that defendant sell to plaintiff all producing and refining facilities and equipment of every kind and nature except the items therein specifically reserved, and that it was the intention of the parties thereto that defendant sell to plaintiff the casing or pipe installed in all of the oil wells located on said premises.

Denies that said written contract dated January 17, 1941, fails to express the intention of the parties thereto.

Denies that defendant has at all times fully done and performed all of the terms, covenants, conditions and agreements to be performed by defendant under said written contract dated January 17, 1941, and alleges that defendant breached said written contract by refusing to permit plaintiff to remove the casing or pipe from the oil wells on said premises.

Answering The Alleged Second Cause Of Action Set Forth In Defendant's Counter Claim And Cross-Complaint On File Herein:

I.

Plaintiff repeats by reference all of the denials, admissions and allegations contained in plaintiff's Reply to defendant's alleged first cause of action as fully as if herein set forth at length.

II.

Denies that in the preparation of said written contract dated January 17, 1941, the defendant inadvertently or

otherwise or by mistake omitted to state that the subject matter thereof was limited to such producing and refining facilities and equipment as were located on the surface of the premises and/or that it did not include the casing or pipe installed in any of the oil wells located upon said premises.

Denies that in said respect, or in any respect, the written contract dated January 17, 1941, fails to express the intention of the parties thereto.

Denies that at the time of the execution of said written contract dated January 17, 1941, or at any time prior thereto, plaintiff knew or suspected that defendant did not intend to sell to plaintiff the casing or pipe installed in any of the oil wells located on said premises and/or that defendant intended the subject matter of said written contract be limited to producing and refining facilities which were located on the surface of said premises and/or that said written contract failed in such respect, or any respect, to express the intention of the parties thereto.

Wherefore, plaintiff prays that defendant's counter claim and cross complaint be dismissed; that defendant be denied any relief thereunder; and that all costs herein be taxed against defendant and in favor of plaintiff.

PHILIP N. KRASNE and
CARL B. STURZENACKER

By Philip N. Krasne
Attorneys for Plaintiff.

[Verified.]

[Endorsed]: Filed Mar. 5, 1942.

At a stated term, to-wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 6th day of March in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Harry A. Hollzer, District Judge.

No. 1718-H Civil.

Aaron Ferer & Sons,

Plaintiff,

vs.

Richfield Oil Corporation, a corporation,

Defendant.

This cause coming on for submission after hearing on motion of plaintiff for Summary Judgment, pursuant to notice filed January 30, 1942: It is ordered that the cause stand submitted on motion of the plaintiff for Summary Judgment.

It is further ordered that the cause be, and it hereby is, continued to April 6, 1942, for setting.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY
JUDGMENT.

To the Plaintiff, Aaron Ferer & Sons, and to Philip N. Krasne, Esq., and Carl B. Sturzenacker, Esq., Attorneys for the Plaintiff:

Please take notice that on the 16th day of March, 1942, at the opening of Court on such day, or as soon thereafter as counsel can be heard, there will be brought on for hearing the attached Motion of defendant for a Summary Judgment in defendant's favor upon defendant's two causes of action for reformation contained by way of counterclaim or cross-complaint in defendant's answer to the amended complaint herein.

Dated: March 6, 1942.

ROBERT E. PARADISE
WILLIAM J. DeMARTINI

By Robert E. Paradise
Attorneys for Defendant Richfield Oil Corporation.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT.

To the Honorable United States District Court above named:

Defendant Richfield Oil Corporation moves the Court for a Summary Judgment in favor of defendant and against plaintiff as to all matters contained in defendant's two causes of action for reformation as set forth by way of counterclaim or cross-complaint in defendant's answer to plaintiff's amended complaint herein.

Said Motion is made upon the following grounds:

1. On March 5, 1942, plaintiff filed its reply to said two causes of action of counterclaim and cross-complaint set forth in defendant's answer to the amended complaint herein.

2. That it appears from all of the records and files in the above entitled case, and particularly from

(a) The affidavit of H. H. Kelly filed herein on February 17, 1942;

(b) The affidavit of Harold Davis filed hereon on February 17, 1942;

(c) The affidavit of F. I. McGahan filed herein on February 17, 1942;

(d) The further affidavit of F. I. McGahan filed herein on February 19, 1942;

(e) The deposition of T. H. Clements (on file herein);

(f) The deposition of Morris Ferer (on file herein); and

(g) The deposition of David Zeidenfeld (on file herein),

that

(1) The defendant Richfield Oil Corporation at all times during the negotiations and up to and including the date of the contract intended that the subject matter of the sale be limited to the equipment and facilities located upon the surface of the land and Richfield Oil Corporation did not intend that the casing in the wells be included in the subject matter of such sale or that any of such wells be abandoned.

(2) The plaintiff knew or suspected that Richfield Oil Corporation did not intend to sell any of the casing in the wells or to have any of such wells abandoned.

(3) During the negotiations for the contract and at the time of the execution of the contract, plaintiff Aaron Ferer & Sons did not intend to purchase under such contract the casing installed in such wells or intend to perform the abandonment work on such wells in the manner required by Section 3233 of the Public Resources Code, which would be necessary in connection with the removal of casing from such wells. The plaintiff intended to abandon only such of the wells as should prove profitable to be abandoned and accordingly to remove only the casing from such profitable wells,

and that there is no genuine issue as to any material fact herein and that defendant Richfield Oil Corporation is entitled, as a matter of law, to a judgment reforming the written contract dated January 17, 1941 in accordance with the prayer therefor in defendant's answer to the amended complaint herein.

Said Motion will be made under Rule 56 of the Federal Rules of Civil Procedure and based upon the affidavits and depositions referred to hereinabove and upon all of the records and files in the above entitled case.

Dated: March 6, 1942.

ROBERT E. PARADISE
WILLIAM J. DeMARTINI

By Robert E. Paradise

Attorneys for Defendant Richfield Oil Corporation.

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND
AUTHORITIES.

A party seeking to recover upon a counterclaim or cross-claim may, at any time after the pleading and answer thereto has been served, move for a Summary Judgment in his favor upon all or any part thereof. The judgment sought shall be rendered forthwith if the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Rule 56 Federal Rules of Civil Procedure.

Dated: March 6, 1942.

ROBERT E. PARADISE
WILLIAM J. DeMARTINI

By Robert E. Paradise

Attorneys for Defendant Richfield Oil Corporation.

Received copy of the within this 6th day of March, 1942.
Philip N. Krasne (R. P.).

[Endorsed]: Filed Mar. 6, 1942.

At a stated term, to-wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 16th day of March in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Harry A. Hollzer, District Judge.

No. 1718-H Civil.

Aaron Ferer & Sons,

Plaintiff,

vs.

Richfield Oil Corp.,

Defendant.

This cause coming on for hearing motion of defendant for Summary Judgment, pursuant to notice filed March 6, 1942; Philip N. Krasne, Esq., appearing as counsel for the plaintiff; Robert E. Paradise, Esq., appearing as counsel for the defendant;

Attorney Paradise makes a statement. It is ordered that the defendant file a certain memorandum by March 19, 1942, and that plaintiff file reply within two days, and that the cause stand submitted.

At a stated term, to-wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 29th day of June in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Harry A. Hollzer, District Judge.

No. 1718-H Civil.

Aaron Ferer & Sons, a co-partnership,

Plaintiff,

vs.

Richfield Oil Corporation,

Defendant.

It appearing that plaintiff has filed a motion for summary judgment, or if denied, for a bill of particulars, that since the filing of said motion various affidavits have been filed on behalf of defendant in opposition to said motion and that in addition thereto several depositions have been taken on behalf of defendant, also that defendant has filed a motion for summary judgment upon the two causes of action set forth by way of counterclaim or cross-complaint in its answer, and good cause appearing therefor, it is ordered that plaintiff's motion be, and the same is, denied.

It is further ordered that the submission of defendant's motion for summary judgment is vacated.

At a stated term, to-wit: The February Term, A. D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 1st day of July in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Harry A. Hollzer, District Judge.

No. 1718-H Civil.

Aaron Ferer & Sons,

Plaintiff

vs.

Richfield Oil Corporation,

Defendant

This cause coming on ex parte, Philip N. Krasne, Esq., appearing for the plaintiff, Robert E. Paradise, Esq., appearing for the defendant; the Court and counsel discuss the minute order of June 29, 1942, and the Court makes a suggestion regarding the coming trial of this cause.

Pursuant to stipulation of counsel, it is ordered that this case be set for trial on the merits; that at the trial the affiants that signed various affidavits in connection with the respective motions for summary judgment be deemed to have testified on direct examination on the matters stated in the affidavits, subject to cross-examination, provided, that the affiants are produced for cross-examination; and, also, that the deponents, whose depositions have

have been taken, be deemed to have testified to the answers given on the taking of their respective depositions, subject likewise to cross-examination without restriction because of those same witnesses having been previously examined upon cross-examination and it is further ordered that proper objections to questions in the depositions may be made at the trial.

Attorney Krasne asks that the Court make a ruling on defendant's motion for Summary Judgment which is now pending.

The Court states that it appearing that issues of fact have been raised on defendant's motion for Summary Judgment, it is ordered, that upon that ground alone, said motion be, and it is, denied.

[Title of District Court and Cause.]

Memorandum of Conclusions,

Judge Hollzer, May 29, 1943.

It appearing that by the amended complaint filed herein plaintiff sought relief in the alternative, that is to say, in the first count thereof plaintiff sought declaratory relief adjudging the rights and duties of the parties litigant with respect to the subject matter of said pleading, and in the second count thereof sought a judgment awarding monetary damages for alleged breach of contract; and

It further appearing that this suit is founded upon a certain written contract executed by plaintiff and defendant, and that a copy of said contract is attached to the amended complaint and marked "Exhibit A" therein; and

It further appearing that heretofore defendant submitted a motion to dismiss said pleading and also to dismiss each of the counts thereof, and that thereafter the court entered an order denying said motion to dismiss the amended complaint but granting defendant's motion to dismiss the first count, without leave to amend, granting defendant time within which to serve and file its answer to the second count, said order having been made upon certain grounds all as more particularly set forth in the court's memorandum of conclusions rendered and filed herein; and

It further appearing that thereafter defendant filed its answer and counterclaim or cross-complaint herein, that by its answer defendant has placed in issue many of the material allegations of the second count of the amended complaint and, in addition, as a further defense and by way of a first cause of action under its counterclaim or cross-complaint, defendant has sought reformation of said contract upon the ground of mutual mistake, that is to say upon the ground that at the time of and immediately preceding the execution of said written contract the parties litigant had entered into an oral agreement of sale by defendant to plaintiff, upon certain terms and conditions and for the sum of \$22,000, of certain producing and refining facilities and equipment located on the surface of certain premises owned by defendant, also that said parties did not intend that the subject matter of said contract should include any casing in any of the wells on said premises and that by mutual mistake said written contract failed to express such intention and oral agreement

of the parties; also as a further defense and by way of a second cause of action under its counterclaim or cross-complaint defendant has sought reformation of said contract upon the ground of its own mistake in omitting to state therein that the subject matter of said contract was limited to the producing and refining facilities located on the surface of said premises, that the subject matter of said contract did not include the casing in the wells on said premises, also that plaintiff knew or suspected defendant's intention in that regard, and that said written contract failed to express such intention; and

It further appearing that thereafter plaintiff filed a notice of motion for summary judgment herein, or for a bill of particulars should the latter motion be denied, that subsequently certain depositions were taken on behalf of defendant preparatory to opposing plaintiff's motion for summary judgment, that said depositions and in addition several affidavits were filed on behalf of defendant in opposition to plaintiff's motion for summary judgment, that thereafter defendant filed a motion for summary judgment, that plaintiff's motion for summary judgment was made upon the affidavit of one Morris Ferer, one of the members of the plaintiff co-partnership, and also upon the records and filed herein, and that defendant's motion for summary judgment was based upon two causes of action of its counter-claim or cross-complaint, and the aforementioned affidavits filed on its behalf and also upon the depositions of said Morris Ferer and of one T. H. Clements and also the deposition of one David Zeidenfeld; and

It further appearing that thereafter plaintiff's motion for summary judgment was denied and that an order was

made to the effect that plaintiff's demand for a bill of particulars shall be deemed covered and as having been complied with by the statement made by defendant's counsel in open court, also that thereafter an order was made denying defendant's motion for summary judgment solely upon the ground that issues of fact had been raised in opposition to defendant's motion; and

It further appearing that thereafter a trial was had upon the merits; and

It further appearing that plaintiff contends:

(1.) That the contract sued upon is clear and unambiguous upon its face and by the terms thereof the property sold to plaintiff included the casing in the oil wells upon defendant's premises at Casmalia, Santa Barbara County.

(2.) That since no uncertainty or ambiguity with respect to the intentions of the parties appears on the face of the written contract, no parol evidence is necessary or proper to aid in its construction;

(3.) That even if the court should decide that parol evidence is necessary and proper to aid in the construction of said written contract, the preponderance of such evidence supports plaintiff's contention that defendant has sold to it the casing in said oil wells.

(4.) That defendant has failed to establish any oral agreement to conform to which said written contract can be reformed.

(5) That defendant has failed to establish any mistake in said written contract.

(6) That even if the evidence establishes that a mistake was made in the wording of said written contract, such mistake was the result of defendant's gross negligence.

It further appearing that in support of its first two contentions above outlined plaintiff relies primarily, if not altogether, upon the views expressed by the court in its memorandum of conclusions hereinbefore mentioned; and

It further appearing that during the course of the trial the court declared that a doubt had been raised respecting the proper construction of said written contract; and

It further appearing that throughout the negotiations antecedent to, and likewise at the time of the execution of said contract plaintiff was represented by said M. Ferer, assisted by said Clements; and

It further appearing that four of defendant's employees namely, R. D. Montgomery, (manager of defendant's production department) H. H. Kelly, (director of defendant's purchasing department) Harold Davis, (his assistant buyer) and F. I. McGahan, (defendant's supervisor of storehouses) participated either directly or indirectly in the negotiations antecedent to the execution of said contract, and that one or more of them represented defendant at the time said contract was executed; and

It further appearing that prior to and at the time of the execution of said contract all of said employees of defendant knew that none of the oil wells upon its Casmalia property was to be abandoned, that likewise they had been instructed that only surface equipment on said premises was to be sold, that none of them intended to sell any of the oil well casing in said wells, and that no other employee of defendant carried on any of the negotiations leading up to the execution of said contract; and

It further appearing that the expression "surface equipment" is a term in common use in the oil industry, that the same means equipment located upon the surface and includes pipe lines, even though a portion thereof extends underground and that casing in an oil well is not classified in the oil industry as surface equipment but is commonly referred to as sub-surface equipment; and

It further appearing that said Clements had received a university education particularly in petroleum technology, that he had specialized in work of that character, also that he had had considerable experience in the oil industry, was familiar with the nature of the work involved in the abandonment of oil wells, and in addition knew that defendant's oil field at Casmalia had not been depleted, but that oil had not been produced therefrom during a period of many years; and

It further appearing that throughout the period during which negotiations were conducted leading up to the making of said contract and also at the time of the execution thereof the aforementioned Zeidenfeld was in the employ of plaintiff, that during said antecedent negotiations he obtained from one McGahan, an employee of defendant, information to the effect that defendant proposed to sell certain equipment and facilities located upon its Casmalia property in Santa Barbara County, also that such equipment and facilities comprised what are included in the oil industry in the classification of property known as surface equipment, that the same would weigh approximately 1500 tons, that the nature and quantity thereof could be ascertained by visual inspection thereof upon said premises, also that thereafter such information was conveyed by Zeidenfeld to said Ferer, that thereafter and during such

antecedent negotiations similar information was given by said McGahan to said Ferer and also to said Clements, that the latter became associated with plaintiff in carrying out the aforementioned contract and acquired an interest therein, that is to say acquired a one-third interest in any profits and agreed to pay a corresponding percentage of any losses arising out of the performance of said contract, also that said McGahan informed Ferer that he had no inventory of the property proposed to be sold but that he was willing to meet him on said premises and there point out the particular equipment and facilities which defendant proposed to sell; and

It further appearing that during the summer of 1940 Clements learned that defendant was having work performed on the wells upon its land at Casmalia, that such work included the removal of derricks, also the removal of tubing and rods from said wells and capping the wells at the surface, but without abandoning the same; and

It further appearing that prior to the execution of said contract Ferer and Clements visited said premises and made a visual inspection of the surface equipment thereon, that neither upon the occasion of said visit nor at any other time, did plaintiff or anyone representing it make any inspection to ascertain the length or the size or the weight or the condition of the casing in the oil wells upon said premises, that likewise at the time of executing said contract plaintiff was not informed respecting the number of such wells or the length or the size or the weight or the condition of the casing therein, nor had plaintiff ascertained or secured any estimate of the cost of abandoning any of such wells; and

It further appearing that at the time of executing said contract plaintiff did not know whether the condition of

any of the wells upon said premises was such that the cost of abandoning the same would exceed the value of any salvage recoverable by abandonment; and

It further appearing that during the negotiations antecedent to the execution of said contract defendant's employee named Davis pointed out to Ferer and Clements on a certain map of said premises (a copy of which map is attached to said contract) the gas line running from one of the wells on said premises to the superintendent's house, also stated to them that defendant would exclude such pipe line from the proposed sale and further called attention to the fact that if sufficient gas to serve the superintendent's house were not obtained from such well it might be necessary to exclude from the proposed sale gas pipe lines running from other wells, and that at the time of the execution of said contract plaintiff did not know the number of wells from which gas lines extended; and

It further appearing that during the negotiations antecedent to the execution of said contract, defendant's employee named Davis informed Ferer and Clements that defendant intended to use the wells on said Casmalia property for the future production of oil and for that reason declined to include in the proposed sale the six large storage tanks referred to in Paragraph I, subparagraph (f) of said contract; and

It further appearing that neither during the negotiations antecedent to the execution of said contract nor at the time of executing same was any mention made of abandoning any of the wells upon said premises or of removing any casing therefrom; and

It further appearing that casing cannot safely be removed from an oil well without abandoning the same and

without complying with the requirements of the California Division of Oil and Gas regulating the abandonment of oil wells; and

It further appearing that no inquiry was made by or on behalf of plaintiff of the California Division of Oil and Gas respecting what requirements and regulations thereof must be complied with in the matter of abandoning any wells or removing any casing from any wells upon defendant's land at Casmalia, nor did plaintiff know what such requirements or regulations were; and

It further appearing that in said contract, more particularly in Paragraph I, subdivision (h) thereof, it is provided that among the items of equipment and facilities excepted from the sale are "gas pipe lines, connecting wells on the land above described to the superintendent's house (Tr. 1494)" that upon the map attached as Exhibit A to said contract there appears a notation in red reading "and any extensions of gas line necessary to furnish gas to Duncan's house"; and

It further appearing that if the parties to said contract had intended to include among the articles sold the casing in such wells, it would have been obligatory on the part of plaintiff, in connection with the dismantling, removal and disposition of all equipment sold, to remove the casing from all such wells and for that purpose to abandon the same, whereas plaintiff never intended to abandon such wells and did not understand that the provisions of said contract required it to perform such work or dealt with that subject matter;

The Court Concludes that throughout the negotiations antecedent to and at the time of the execution of said contract defendant intended that the subject matter of the sale be limited to the equipment and facilities located upon the surface of its Casmalia property; that defendant did not intend that the casing in any of the wells upon said property be included in the subject matter of said sale or that any of said wells be abandoned.

The Court Further Concludes that prior to and at the time of the execution of said contract plaintiff knew or suspected that defendant did not intend to sell the casing in any of the wells upon said property or to have any of said wells abandoned.

The Court Further Concludes that during the negotiations antecedent to and at the time of the execution of said contract plaintiff did not intend to purchase under such contract the casing in the aforementioned wells or to perform the abandonment work on such wells in the manner required by law and which would be necessary in connection with the removal of casing from such wells.

The Court Further Concludes that defendant is entitled to relief by way of appropriate reformation of said contract.

The Court further concludes that plaintiff is not entitled to recover any relief herein.

[Endorsed]: Filed May 29, 1943.

At a stated term, to-wit: The February Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Saturday the 29th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Harry A. Hollzer, District Judge.

No. 1718-H Civil.

Aaron Ferer & Sons, a co-partnership,

Plaintiff,

vs.

Richfield Oil Corporation, a corporation,

Defendant.

For the reasons set forth in the memorandum of conclusions this day filed, it is ordered that counsel for defendant prepare and submit findings and decree in conformity therewith, serving a copy upon opposing counsel.

Copies to counsel.

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED AMENDMENTS TO
FINDINGS OF FACT AND CONCLUSIONS OF
LAW.

Comes Now the plaintiff and respectfully submits that the proposed findings of fact and judgment heretofore submitted by defendant herein should be amended as follows:

I.

Re Finding No. 7:

The following sentence should be added: "Neither said R. D. Montgomery or H. H. Kelly, however, were ever

in direct communication with plaintiff or any representative of plaintiff at the time said contract was executed or during any of the antecendent negotiations.”

II.

Re Finding No. 8:

The following should be added: “On December 10, 1940 plaintiff submitted a written offer to defendant relating said property to and including loading *rach* adjacent to premises above described (Plaintiff’s Exhibit No. 2), said offer was in the following language:

“December 10, 1940

Richfield Oil Corporation
555 South Flower Street
Los Angeles, California

Attention: Mr. H. E. Davis, Purchasing Department
Gentlemen:

We are pleased to submit our bid in the sum of Twenty-Two Thousand Dollars (\$22,000.00), to cover all tanks, pipe, valves, fittings, buildings, boilers, and all other materials now situated on your Casmalia refining and producing property, plus pipe line running from the aforesaid property to and including loading *rach* adjacent to the railroad track, one-half mile west, including boiler and other incidental materials. We exclude the following items:

Superintendent’s house, garage and building now used as a cow barn;

Main incoming water line, and such line as needed to supply house and cow barn,

Six large steel storage tanks, approximately 50,000 barrels each,

Six shell stills, plus one shell still bottom previously sold to the O. C. Fields Company,

Certain 4 inch tubes previously sold to the West Coast Oil Company.

Cashier's Check in the sum of Twenty-Two Thousand Dollars, (\$22,000.00), will be paid you within Ten (10) days after notification of acceptance of this bid.

Bidder desires six months' time within which to remove all of the above-mentioned merchandise; retains the privilege of leaving any brick, galvanized tanks and other debris which is not useable; but guarantees not to create any hazards for cattle by creating any pitfalls, other than those which now exist.

Hoping to have an immediate acceptance, favoring us with this material, we remain

Very truly yours,

AARON FERER & SONS

By

Morris Ferer

L.

c.c. Mr. Clemens

Refinery Equipment Co."

Prior to the date of said written offer there had been no meeting of the minds between plaintiff and defendant with respect to the sale of any of the equipment at said premises.

On January 2, 1941, defendant executed and delivered to plaintiff a written acceptance of plaintiff's said offer (Plaintiff's Exhibit No. 3), said acceptance was in the following language:

“RICHFIELD OIL CORPORATION

Richfield Building — Los Angeles — California

January 2, 1941

Paid 1/7/41

#12530

Aaron Ferer & Sons

5585 East 61st St.

Los Angeles, Calif.

Attention: Mr. Morris Ferer

Gentlemen:

Confirming our telephone conversation of today, we hereby accept your offer, dated December 10th, in the amount of \$22,000.00, for all tanks, pipe, valves, fittings, buildings, boilers, tank car loading facilities and other material and equipment belonging to Richfield, located on our Soladino Lease in Casmalia, with the following exceptions:

Superintendent's house, garage and building now used as a cow barn.

Main water line and pipe line necessary to supply house and cow barn.

Six steel storage tanks, Co. Nos. PR-29230, 29231, 29238, 29239, 29240, 29241.

Six shell stills and two still bottoms, including connections and such firebrick at the location of the stills required by O. C. Field Gasoline Co.

Tubes and other equipment at the Retort previously purchased by the Mid-Coast Oil Company.

Twelve dehydrators belonging to Petroleum Rectifying Co.

It is agreed that you will furnish us with Cashier's Check in the amount of \$22,000.00, within ten days after date of this letter and that all tanks will be removed and debris disposed of and pits and ditches filled in, leaving property in a good clean usable condition.

Very truly yours,

RICHFIELD OIL CORPORATION

(Signed) H. H. KELLY

H. H. KELLY, Purchasing Agent

HED:ad''

Between the date of plaintiff's said written offer and defendant's said written acceptance there were no oral conversations whatsoever between plaintiff and defendant relating to said sale, except that prior to the date of defendant's acceptance, Harold Davis, defendant's assistant buyer, told Morris Ferer that defendant was accepting plaintiff's said offer.

On January 8, 1941, defendant delivered its check in in the sum of Twenty-two Thousand Dollars (\$22,000.00) to plaintiff and concurrently therewith defendant, through said, Harold Davis, prepared and delivered to plaintiff a written memorandum relating to said sale; said written memorandum was in the following language:

“Sale Of Material And Equipment At Casmalia
To Aaron Ferer and Sons, 5585 E. 61st St., Los Angeles
Payment: Cashier's or Certified Check in the amount of
\$22,000.00, payable in advance.

Material purchased for resale, Purchaser to be allowed six months for removal.

Everything will be sold to the above with the exception of the following:

1. 12 dehydrators belonging to Petroleum Rectifying Co.
2. Water pump, water storage facilities and water piping which services Superintendent's house and cow barn.
3. Superintendent's house and garage, frame house PR-17318.
4. Six shell stills and 2 extra still bottoms, including connections which are affixed thereto up to and including the first flange in the piping hook-up.
(Previously sold to O. C. Field Gasoline Company)
5. Material and equipment sold to the Mid-Coast Oil Company, not yet removed from the property.
6. 6 tanks, Nos. PR-29230—Capacity 55,000 barrels

29231	“	“	“
29238	“	5,700	“
29239	“	10,050	“
29240	“	30,190	“
29241	“	37,250	“

Purchaser shall remove all oil in tanks from the property, debris to be disposed of on the property by placing in the washed-out portions of a creek running through the Refining Property in such a manner that the normal course of the stream is not restricted.

The two large sumps on the North side of the above referred to creek across from the Refinery should be properly fenced, using salvage pipe for post and sand line for wire to prevent cattle from getting bogged down in the sumps during wet weather.

All ditches and pits should be filled in after removal of pipe and other equipment and left in safe condition.

Concrete buildings and foundations on the Refinery Property will not constitute a hazard and therefore can be left in place.

HED:ad

Jan. 8, 1941"

Between the date of plaintiff's offer and the date of said written memorandum, defendant did not, through any of its employees or representatives, tell plaintiff that defendant intended to sell only "surface equipment" or that defendant did not intend to sell the casing in the oil wells. During said period the words, "surface equipment", or the word "casing" were never mentioned in any conversation between any representative of defendant and any representative of plaintiff.

III.

Re Finding No. 11:

The first eleven words thereof ("during the negotiations and prior to the execution of the contract") should be deleted and there should be substituted in lieu thereof, the following: "On January 8, 1941, after plaintiff had delivered to defendant the Twenty-Two Thousand Dollars (\$22,000.00) payment, pursuant to plaintiff's written offer and defendant's written acceptance, and after the delivery by defendant to plaintiff of the written memorandum dated January 8, 1941."

IV.

Re Finding No. 12:

The first eleven words thereof ("during the negotiations and prior to the execution of the contract") should be deleted and there should be substituted in lieu thereof, the following: "Some days after January 8, 1941.

There should also be added at the end of Finding No. 12 the following sentence: "Except for the considerations provided for in plaintiff's written offer and defendant's written acceptance, there was no consideration to support plaintiff's consent to exclude from the sale any gas line or gas lines running from any of the wells to the superintendent's house and the value of such gas lines to plaintiff as salvage was comparatively trivial."

V.

Re Finding No. 13:

The following sentence should be added: "Said F. I. McGahan made said statement to said T. H. Clements some time prior to the date of plaintiff's written offer, but did not repeat it at any time between the date of said written offer and the date of the execution of the contract."

VI.

Re Finding No. 14:

The following should be added: "Said F. I. McGahan made said statement to said M. Ferer some time prior to the date of plaintiff's written offer, but did not repeat it at any time between the date of said written offer and the date of the execution of the contract." "Neither said F. I. McGahan or any other representative of defendant met said M. Ferer, or any other representative of plaintiff, on said Casmalia premises, nor did said F. I. McGahan, nor any other representative of defendant ever point out to said M. Ferer, or any other representative of plaintiff the particular equipment and facilities which defendant proposed to sell.

VII.

Re Finding No. 16:

The following should be added: "At the time of the making of said statements by F. I. McGahan to said David Zeidenfeld, and at the time of the conversation between said Zeidenfeld and M. Ferer, said Zeidenfeld believed that it was defendant's desire to sell all of its equipment at its Casmalia premises. Said Zeidenfeld at said times also believed that the equipment at said premises consisted only of refinery equipment and that the fifteen-hundred ton estimate of said F. I. McGahan related only to refinery equipment."

VIII.

Re Finding No. 17:

The following should be added: "At the time said David Zeidenfeld told said M. Ferer that if plaintiff was interested in buying Richfield's equipment, plaintiff would have to bid somewhere in the amount of \$20,000.00, said Zeidenfeld did not mean that a bid in such amount would have to be made because of said F. I. McGahan's estimate of the tonnage. Said Zeidenfeld had inferred from his conversations with F. I. McGahan that unless a lump sum bid were made in some such amount defendant would sell its equipment in individual quantities rather than in bulk."

IX.

Re Finding No. 18:

Grtd The last sentence of the first paragraph of said finding (page 8, lines 2 to 6) should be deleted.

Den. The following sentence should be added: "Said

T. H. Clements also knew that the reason oil had not been produced at said field for a period of many years was that the production of oil from said field had not been profitable because of the poor quality of such oil and the abnormal cost of producing it."

X.

Re Finding No. 30:

This finding should be deleted in its entirety and the following should be substituted in lieu thereof: "Under the provisions of said written contract, dated January 17, 1941, as executed, the subject matter of the sale included the casing in the oil wells located on defendant's said Casmalia premises."

XI.

Paragraph III of the proposed judgment should be corrected by deleting therefrom as a taxable item of cost the cost of the original transcript furnished to the Court. It is our recollection that the cost of the said transcript was to be, and has heretofore in fact been paid fifty percent (50%) by defendant and fifty percent (50%) by plaintiff.

Respectfully submitted,

PHILIP N. KRASNE

CARL B. STURZENACKER

By Carl B. Sturzenacker

Counsel for Plaintiff.

PNK:J
7/12/43

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 12. 1943.

[Title of District Court and Cause.]

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S
PROPOSED AMENDMENTS TO FINDINGS
OF FACT AND CONCLUSIONS OF LAW.

Defendant objects in the following respects to the amendments proposed by plaintiff to the Findings of Fact and Conclusions of Law:

I.

Re proposed amendment No. I to finding No. 7.

Defendant does not object to the proposed amendment if it is limited to R. D. Montgomery.

However, the proposed amendment to the effect that H. H. Kelly was not "ever in direct communication with plaintiff or any representative of plaintiff" is not supported by the record. H. H. Kelly signed a letter to plaintiff (plaintiff's Exhibit No. 3); and also signed the contract with plaintiff (plaintiff's Exhibit No. 4); and H. H. Kelly also had a conversation with M. Ferer and T. H. Clements (Tr. pp. 152, 153).

II.

Re proposed amendment No. II to finding No. 8.

Defendant objects to the entire proposed amendment No. II to finding No. 8 on the following grounds:

(1) The matters stated in plaintiff's proposed amendment No. II have no relation to finding No. 8 and are not pertinent thereto.

(2) There is no occasion for quoting verbatim in the Findings any of the exhibits introduced into evi-

dence inasmuch as such exhibits would become a part of the record on appeal. If any of the exhibits are to be included in the Findings all exhibits which were introduced in evidence should be included in the Findings.

(3) If plaintiff's offer, dated December 10, 1940 (plaintiff's Exhibit 2) and defendant's acceptance, dated January 2, 1941 (plaintiff's Exhibit 3) and the memorandum dated January 8, 1941 (plaintiff's Exhibit 1) are referred to in the Findings of Fact, there must also be a finding of fact that neither the defendant's acceptance (plaintiff's Exhibit 3) nor the Davis memorandum (plaintiff's Exhibit 1) was understood by either plaintiff or defendant to create a contractual relationship between the parties on the terms stated in such documents. The parties contemplated that a formal contract covering the proposed sale had to be prepared and executed. The documents referred to were merely a part of the negotiations between the parties and further negotiations took place between the parties subsequent to both documents and up to the date of signing the written contract of January 17, 1941 (plaintiff's Exhibit 4). M. Ferer understood that the Davis memorandum (plaintiff's Exhibit 1) constituted only the "nucleus or the basis the contract would be drawn on." Many additional changes in the transaction and additional terms were added subsequent to December 10, 1940 and January 2, 1941. (Ferer's Dep. p. 246, line 3, to p. 249, line 13).

(4) There is no support in the record for the proposed findings:

- (a) "Between the date of plaintiff's said written offer and defendant's said written acceptance there were no oral conversations whatsoever between plaintiff and defendant relating to said sale, except that prior to the date of defendant's acceptance, Harold Davis, defendant's assistant buyer, told Morris Ferer that defendant was accepting plaintiff's said offer.", (p. 4, lines 26-31 of plaintiff's proposed amendments) or
- (b) "Between the date of plaintiff's offer and the date of said written memorandum, defendant did not, through any of its employees or representatives, tell plaintiff that defendant intended to sell only 'surface equipment' or that defendant did not intend to sell the casing in the oil wells. During said period the words, 'surface equipment', or the word 'casing' were never mentioned in any conversation between any representative of defendant and any representative of plaintiff." (p. 6, lines 15-22 of plaintiff's proposed amendments)

The dates of the various conversations were not all fixed by the testimony with such definiteness to warrant the amendments to the findings proposed by plaintiff. More importantly, the amendments proposed by plaintiff attempt to give a particular significance to the period occurring between the date of plaintiff's offer and the date of the written memorandum of January 8, 1941. The record does not warrant any emphasis upon, or significance to, such period inasmuch as the period prior thereto and the period subsequent thereto, were all parts of the same negotiations.

III.

Re proposed amendment No. III to finding No. 11.

Defendant objects to the deletion of the phrase "during the negotiations and prior to the execution of the contract." Finding No. 11 is completely supported by the record, and in addition was specifically referred to in the same language in the Court's memorandum of conclusions dated May 29, 1943, at page 7, lines 22-29.

If the phrase "during the negotiations and prior to the execution of the contract" is permitted to remain in finding No. 11, defendant does not object to an addition to the findings to the effect that the statement of H. Davis to M. Ferer and to T. H. Clements occurred on January 8, 1941; but defendant does object to the argumentative language proposed by the plaintiff, to wit,

"after plaintiff had delivered to defendant the Twenty-Two Thousand Dollars (\$22,000.00) payment, pursuant to plaintiff's written offer and defendant's written acceptance, and after the delivery by defendant to plaintiff of the written memorandum dated January 8, 1941." (p. 6, lines 28-32 of plaintiff's proposed amendments)

for the reasons:

(1) That such language constitutes an attempt to modify the Court's finding that the negotiations continued up until the execution of the contract on January 17, 1941, and

(2) It does not appear from the record whether the statement of Harold Davis concerning the six large storage tanks occurred before or after plaintiff delivered the \$22,000.00 check, or before or after Davis delivered the written memorandum dated January 8, 1941.

IV.

Re proposed amendment No. IV to finding No. 12.

Defendant objects to the deletion of the phrase "during the negotiations and prior to the execution of the contract" for the same reasons outlined in connection with proposed amendment No. III. If such phrase is permitted to remain in finding No. 12, defendant does not object to the finding also stating that such conversation occurred between January 8, 1941 and the date of the execution of the contract.

Defendant objects to the proposed addition at the end of finding No. 12 of the following:

"Except for the considerations provided for in plaintiff's written offer and defendant's written acceptance, there was no consideration to support plaintiff's consent to exclude from the sale any gas line or gas lines running from any of the wells to the superintendent's house and the value of such gas lines to plaintiff as salvage was comparatively trivial." (p. 7, lines 8-14 of plaintiff's proposed amendments) on the following grounds:

(1) Plaintiff's proposed amendment is an attempt to establish that the negotiations were concluded on January 2, 1941 (the date of defendant's written acceptance), which is contrary to the record and to the Court's conclusions that the negotiations continued up to January 17, 1941, the date of the execution of the contract, and

(2) Inasmuch as exclusion of the gas lines was a part of the entire transaction, there was no necessity for any separate consideration for such exclusion.

V.

Re proposed amendment No. V to finding No. 13.

Defendant objects to the proposed amendment on the ground that it is purely argumentative. Since the Court has found as a fact that the statement was made (Court's memorandum of conclusions, p. 6-a, lines 3-5), there is no occasion to impugn such finding by matters which go solely to the probative value of the evidence upon which the Court based such finding. Furthermore, there is no requisite in law or business dealings that a statement once made must, to have any significance, be repeated once or any additional number of times.

VI.

Re proposed amendment No. VI to finding No. 14.

Defendant objects to the proposed amendments on the ground that they are argumentative, and upon the same grounds listed in connection with proposed amendment No. V hereinabove. Defendant also objects to the proposed amendment,

"Neither said F. I. McGahan or any other representative of defendant met said M. Ferer, or any other representative of plaintiff, on said Casmalia premises, nor did said F. I. McGahan, nor any other representative of defendant ever point out to said M. Ferer, or any other representative of plaintiff the particular equipment and facilities which defendant proposed to sell." (p. 7, line 28 to p. 8, line 2 of plaintiff's proposed amendments)

on the ground that such a finding is not warranted inasmuch as no request was made of F. I. McGahan to meet M. Ferer, or any other representative of plaintiff, on the premises and point out the particular equipment to be

sold, notwithstanding that McGahan had offered to M. Ferer to make such trip.

VII.

Re proposed amendment No. VII to finding No. 16.

Defendant objects to the proposed amendment on the ground that the same is not supported by the record, in view of the testimony of Zeidenfeld and McGahan. [Tr. p. 254, lines 11-25; Tr. p. 227, lines 18, to p. 229, line 1; Tr. p. 261, line 18, to p. 262, line 2.]

VIII.

Re proposed amendment No. VIII to finding No. 17.

Defendant objects to the proposed amendment on the ground that whatever reason the said Zeidenfeld had in his own mind for suggesting to M. Ferer that the latter bid the sum of \$20,000.00, which reason was not disclosed by Zeidenfeld to M. Ferer, is completely immaterial inasmuch as the significance of the conversation between Zeidenfeld and Ferer concerning the sum of \$20,000.00 was the knowledge and notice which M. Ferer received from such conversation in view of the fact that Zeidenfeld had already told M. Ferer that the tonnage involved was approximately 1500 tons, and in view of the further fact that plaintiff's bid following the receipt of such information, was approximately the same amount suggested to M. Ferer by Zeidenfeld.

IX.

Re proposed amendment No. IX to finding No. 18.

The last sentence of the first paragraph of finding No. 18 should not be deleted. It is thoroughly supported by the record. (Tr. p. 311, lines 15-19.)

Defendant also objects to the proposed amendment concerning the knowledge of T. H. Clements on the ground

that the testimony of T. H. Clements was largely untrustworthy, as evidenced by the constant impeachments of his testimony by use of his deposition.

X.

Re proposed amendment No. X to finding No. 30.

Defendant objects to the deletion of this finding or the substitution of the amendment proposed by plaintiff.

At the trial the Court stated that the proper construction of the contract had not been finally determined. The same view is expressed in the Court's memorandum of conclusions dated May 29, 1943, p. 5, lines 10-12. As stated in finding No. 30, it is unnecessary to make any finding concerning the construction or interpretation of the contract, in view of the findings of the Court concerning reformation. Any finding at this time concerning the interpretation of the contract would be anomalous.

XI.

Defendant objects to the suggested amendment to paragraph III of the proposed judgment. The Court's order was that the cost of the original transcript, the Court's copy, would be divided between the parties equally at the time of the trial, but that the amount thereof would be taxed as costs. (Tr. pp. 215, 216) Paragraph III of the proposed judgment incorporates such ruling with exactness.

Respectfully submitted,

ROBERT E. PARADISE

WILLIAM J. DeMARTINI

By Robert E. Paradise

Attorneys for Defendant.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 20, 1943.

[Title of District Court and Cause.]

MEMORANDUM OF CONCLUSIONS.

Judge Hollzer's Calendar, October 28, 1943.

It appearing that a memorandum of conclusions rendered herein by the Court has been filed and that pursuant thereto proposed findings and judgment have been drafted, served and submitted by counsel for defendant; and

It further appearing that counsel for plaintiff has served and filed proposed amendments to the same; and

It further appearing that counsel for defendant has served and filed objections to such proposed amendments, and the same having been considered;

The Court Concludes that plaintiff's proposed amendments numbered I, II, III, IV, V, VI, VII, VIII, X, and XI are each and all without merit and should be refused, save and except as follows:

There shall be added to Finding No. 7 the following sentence: "Said R. D. Montgomery was never in direct communication with plaintiff or any representative of plaintiff at the time said contract was executed or during any of the antecedent negotiations."

There shall be added to finding No. 11 the following sentence, to-wit: "Said statement by Harold Davis to M. Ferer and to T. H. Clements occurred on January 8, 1941."

There shall be added to finding No. 12 the following sentence, to-wit: "Such conversation between Harold Davis, M. Ferer and T. H. Clements occurred between January 8, 1941, and the date of the execution of the contract."

The Court Further Concludes that the last sentence of the first paragraph of finding No. 18 is argumentative and should be deleted.

The Court Further Concludes that the remaining portion of plaintiff's proposed amendment No. IX is without merit and should be refused.

Copies to counsel.

[Endorsed]: Filed October 28, 1943.

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 28th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable Harry A. Hollzer, District Judge.

No. 1718-H

Aaron Ferer & Sons, a co-partnership,

Plaintiff.

vs.

Richfield Oil Corporation,

Defendant.

For the reasons set forth in the memorandum of conclusions this day filed,

It Is Ordered that counsel for defendant prepare, serve and submit to the Court revised findings in accordance therewith.

Copies to counsel.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled action came on regularly for trial on September 3, 1942. Evidence oral and documentary was introduced by the respective parties. In addition, pursuant to stipulation and order of this Court made on July 1st, 1942, various affidavits and depositions, which were filed in connection with the respective motions for summary judgment in this action, were admitted in evidence at the trial subject to cross examination of the affiants and deponents and subject to proper objections at the trial to questions in the depositions. By order of this Court at the trial the deposition of one David Zeidenfeld was eliminated from the scope of said order of this Court of July 1, 1942 and such deposition was not admitted in evidence. Briefs having been filed by the respective parties and the Court, having carefully considered the evidence and the arguments of counsel and having filed its Memorandum of Conclusions under date of May 29, 1943 and being fully advised in the premises, now makes the following Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Rules of Civil Procedure:

Findings of Fact.

1. Plaintiff copartnership and the respective copartners thereof are citizens of the State of California and the defendant Richfield Oil Corporation is a corporation organized and existing under the laws of the State of Delaware and a citizen of said State.

2. The controversy between plaintiff and defendant is of a civil nature at law or equity and involves a sum in

excess of Three Thousand Dollars (\$3,000) exclusive of interest and cost.

3. Prior to January 17, 1941 defendant, as Seller, and plaintiff, as Buyer, made an agreement for the sale, for the sum of Twenty-two Thousand Dollars (\$22,000), of certain refinery and producing facilities and equipment located on land at Casmalia, California, owned by defendant, and plaintiff agreed, among other things, to perform at its sole cost and expense certain work in connection therewith, which work included the dismantling, removal and disposition of all equipment and facilities to be purchased by the plaintiff thereunder. The equipment and facilities to be sold consisted of various pipe lines, boilers, buildings, pumps, tanks, motors, engines and scrap metal scattered over the property. Various items of facilities and equipment were expressly excluded from such sale, including, among other things, gas pipe lines connecting wells on the land to the superintendent's house and six (6) large storage tanks (having capacities of from fifty-seven hundred (5700) barrels to fifty-five thousand (55,000) barrels, respectively) and major suction and discharge oil pipe lines connecting such tanks.

4. To evidence such agreement, plaintiff and defendant executed a written contract dated January 17, 1941 (Plaintiff's Exhibit No. 4).

5. The written contract dated January 17, 1941, did not truly express the agreement or the intention of plaintiff and defendant in that it did not expressly provide (1) that the subject matter of the sale did not include the casing in any of the oil wells located on the land; and (2) that the plaintiff had no obligation, as a part of the work plaintiff agreed to perform under such contract, to abandon

such oil wells or dismantle or remove or dispose of the casing contained therein.

6. Throughout the negotiations antecedent to and likewise at the time of the execution of the contract, plaintiff was represented by M. Ferer, assisted by T. H. Clements.

7. Four of defendant's employees, namely, R. D. Montgomery (Manager of defendant's Production Department), H. H. Kelly (Director of defendant's Purchasing Department), Harold Davis (his assistant buyer), and F. I. McGahan (defendant's supervisor of storehouses) participated either directly or indirectly in the negotiations antecedent to the execution of said contract and one or more of them represented defendant at the time said contract was executed.

Said R. D. Montgomery was never in direct communication with plaintiff or any representative of plaintiff at the time said contract was executed, or during any of the antecedent negotiations.

8. The negotiations antecedent to the execution of said contract occupied a period of several months prior to the execution of the contract. During said negotiations and at the time of the execution of said contract, all of said employees of defendant knew that none of the oil wells upon defendant's Casmalia property was to be abandoned. Such employees had been instructed that "surface equipment" on said premises was to be sold. Neither defendant nor any of said employees intended to sell to plaintiff any of the oil well casing in any of said wells. Neither defendant nor any of said employees of defendant intended that any of the oil wells be abandoned or that any casing be removed from any of such wells. Casing cannot safely

be removed from an oil well without complying with the requirements of the California Division of Oil and Gas regulating the abandonment of oil wells.

9. The various wells on the Casmalia property were drilled and produced oil from 1917 to 1925. At the time production of oil from such wells was discontinued in 1925 the oil pool underlying the land had not been depleted. Defendant and its predecessors in interest from time to time subsequent to 1929, made studies of the problem of reopening the field for the production of oil from such wells. During 1940, a few months prior to the negotiations between plaintiff and defendant, defendant employed a contractor to remove the worn derricks, tubing and rods from such wells because of the hazardous condition thereof but care was taken in connection with such work that the wells be not abandoned and that the casing in the wells be not tampered with and that the wells be capped at the surface in order that the wells might in the future be reopened and reentered for the production of oil therefrom.

At the time such worn derricks, tubing and rods were removed and during the negotiations and at the time of the execution of the contract between plaintiff and defendant, defendant was of the opinion and belief that such derricks, tubing and rods and the pipe lines, boilers, pumps and other equipment and facilities sold under such contract would not be suitable or desirable for use in connection with defendant's proposed new method of operation at such time as defendant reopened the field for the production of oil from such wells. During 1940 and prior to the execution of said contract, defendant ran instruments into the wells and from such operation learned that

the casing therein was sufficient to hold back the formations penetrated by the wells.

10. Plaintiff and plaintiff's employees who represented plaintiff in the negotiations and execution of the contract knew and suspected prior to and at the time of the execution of said contract that defendant did not intend to sell the casing in any of the wells on the Casmalia property or to have any of said wells abandoned.

11. During the negotiations and prior to the execution of the contract, defendant's employee, Harold Davis, told both the said M. Ferer and the said T. H. Clements that defendant intended to use the wells on the Casmalia property for the future production of oil and for that reason declined to include in the proposed sale, as requested by the said M. Ferer and T. H. Clements, the six (6) large storage tanks referred to in paragraph 1, subparagraph (f) of the written contract dated January 17, 1941. Said statement by Harold Davis to M. Ferer and to H. H. Clements occurred on January 8, 1941.

12. During the negotiations and prior to the execution of the contract, the said Harold Davis pointed out to the said M. Ferer and the said T. H. Clements on a certain map of the Casmalia premises (a copy of which map is attached as Exhibit "A" to said contract) the gas line running from one of the wells on the premises to the superintendent's house, which house was excluded from the sale, and Harold Davis stated to the said M. Ferer and T. H. Clements that defendant desired to exclude such pipe line from the proposed sale in order that the superintendent's house, which was excluded from the sale, could continue to receive gas from such well. Such conversation between Harold Davis, M. Ferer and T. H. Clements

occurred between January 8, 1941 and the date of the execution of the contract. At the same time the said Harold Davis also informed the said M. Ferer and T. H. Clements that if there was not gas in such well sufficient to serve the superintendent's house, it might be necessary to exclude from the proposed sale gas lines running to other wells on the property in order to insure sufficient gas supplies to the superintendent's house. At the time of the execution of the contract plaintiff did not know the number of wells to which gas lines extended.

Paragraph 1, subparagraph (h) of the written contract dated January 17, 1941, provides that among the items of equipment and facilities excepted from the sale are "gas pipe lines connecting wells on the land above described to the superintendent's house (P. R. 1494)." Upon the map attached as Exhibit "A" to said contract there appears a notation in red reading: "and any extensions of gas lines necessary to furnish gas to Duncan's house."

13. Prior to the execution of said contract the said T. H. Clements became associated with plaintiff in carrying out the said contract and acquired an interest therein, that is to say, said Clements acquired a one-third ($1/3$) interest in any profits and agreed to pay a corresponding percentage of any losses arising out of the performance of said contract.

During the said negotiations and prior to the execution of the contract the said F. I. McGahan stated to the said T. H. Clements that the facilities and equipment which defendant proposed to sell were "surface equipment."

14. During the negotiations and prior to the execution of the contract the said F. I. McGahan stated to the said

M. Ferer that the equipment to be sold by Richfield was "surface equipment" and that the said F. I. McGahan had no inventory of the property proposed to be sold but that he was willing to meet the said M. Ferer on the said Casmalia premises and there point out the particular equipment and facilities which defendant proposed to sell.

15. The expression "surface equipment" is a term in common use in the oil industry, which term means equipment located upon the surface of the land and includes pipe lines even though a portion thereof extends underground. Casing in an oil well is not classified or referred to in the oil industry as "surface equipment" but is commonly referred to as "subsurface equipment."

16. David Zeidenfeld was in the employ of plaintiff throughout the period during which the negotiations were conducted leading up to the making of said contract and also at the time of the execution thereof. During the negotiations and prior to the execution of such contract the said Zeidenfeld discussed the proposed sale with F. I. McGahan, one of defendant's employees. The said Zeidenfeld was told by F. I. McGahan that defendant proposed to sell certain equipment and facilities located on its Casmalia property in Santa Barbara County; also that such equipment and facilities comprised "surface equipment"; that the same would weigh approximately fifteen hundred (1500) tons and that the nature and quantity thereof could be ascertained by visual inspection thereof on the premises.

On the same evening following the said David Zeidenfeld's conversation with the said F. I. McGahan, the said Zeidenfeld reported to the said M. Ferer that defendant's estimate of the equipment was roughly fifteen hundred

(1500) tons of which nine hundred (900) tons was pipe and six hundred (600) tons was steel. This report to M. Ferer occurred prior to the date of plaintiff's written offer to defendant dated December 10, 1940 (Plaintiff's Exhibit 2).

17. Subsequent to the report to M. Ferer concerning the estimate of tonnage, the said David Zeidenfeld told the said M. Ferer that if plaintiff was interested in buying Richfield's equipment, plaintiff would have to bid somewhere in the amount of Twenty Thousand Dollars (\$20,000). This conversation likewise occurred prior to the date of plaintiff's written offer to defendant dated December 10, 1940 (Plaintiff's Exhibit 2).

18. During the summer of 1940 and shortly before the commencement of the negotiations for the contract, the said T. H. Clements visited defendant's Casmalia property and learned that the defendant was having work performed on the wells on its land at Casmalia, and that such work included the removal of derricks, tubing and rods from said wells. At the same time, the said T. H. Clements also learned that the wells were being capped at the surface but that the wells were not being abandoned or the casing removed.

The said T. H. Clements had received a University education, particularly in petroleum technology, and had specialized in work of that character. He had had considerable experience in the oil industry and was familiar with the nature of the work involved in the abandonment of oil wells. He was familiar with defendant's Casmalia oil field and knew that oil had not been produced therefrom during a period of many years, but he also knew

that the oil reservoir at Casmalia had not been depleted at the time the production of oil from such wells was discontinued.

19. Prior to the execution of said contract the said M. Ferer and T. H. Clements visited the Casmalia premises and made a visual inspection of the surface equipment thereon. Neither upon the occasion of such visit, nor at any other time, did plaintiff, or anyone representing plaintiff, make any inspection to ascertain the length, or the size, or the weight, or the condition of the casing in the oil wells upon the Casmalia premises. Likewise, at the time of executing said contract plaintiff was not informed respecting the number of such wells, or the length, or the size, or the weight, or the condition of the casing therein, nor had plaintiff ascertained or secured any estimate of the cost of abandoning any of such wells.

At the time of executing said contract plaintiff did not know and had made no effort to ascertain whether the condition of any of the wells upon the said Casmalia premises was such that the cost of abandoning the same would exceed the value of any salvage recoverable by abandonment.

20. At no time prior to the execution of said contract was any inquiry made by or on behalf of plaintiff of the California Division of Oil and Gas respecting what requirements and regulations thereof must be complied with in the matter of abandoning any wells or removing any casing from any wells upon defendant's land at Casmalia and at the time of executing said contract plaintiff did not know what such requirements or regulations were.

21. At no time during the negotiations antecedent to the execution of said contract or at the time of executing the same, was there any discussion or mention made be-

tween plaintiff or plaintiff's employees or representatives and defendant or defendant's employees or representatives of abandoning any of the wells upon said Casmalia premises or of removing any casing therefrom.

22. If the parties to said contract had intended to include the casing in such wells among the equipment and facilities to be sold thereunder, it would have been obligatory on the part of plaintiff, in connection with its obligation of "the dismantling, removal and disposition of all equipment and facilities to be purchased" under such contract, to remove the casing from all such wells and for that purpose to abandon all of such wells. The plaintiff never intended to abandon such wells and did not understand or consider that the provisions of said contract required plaintiff to perform such work or dealt with that subject matter.

23. Throughout the negotiations antecedent to and at the time of the execution of said contract, defendant intended that the subject matter of the sale be limited to the equipment and facilities located upon the surface of its Casmalia property; and defendant did not intend that the casing in any of the wells upon the property be included in the subject matter of said sale or that any of said wells be abandoned.

24. Throughout the negotiations antecedent to and at the time of the execution of said contract, plaintiff had both knowledge and suspicion that defendant did not intend to sell the casing in any of the wells upon the Casmalia property or to have any of said wells abandoned.

25. The failure of the written contract dated January 17, 1941, to express truly the intention of the parties to the contract resulted from the mistake of the defendant

which the plaintiff knew and suspected at the time of the execution of the contract.

26. During the negotiations antecedent to and at the time of the execution of said contract, plaintiff did not intend to purchase under such contract the casing in the aforementioned wells or to perform the abandonment work on such wells in the manner required by law which would be necessary in connection with the removal of casing from such wells.

27. During the negotiations antecedent to and at the time of the execution of said contract, defendant did not intend to assume any obligation to the plaintiff under such contract to perform the abandonment work on the aforementioned wells in the manner required by law and did not understand or consider that it would have any such obligation.

28. The failure of the written contract dated January 17, 1941, to express truly the intention of the parties to the contract resulted from a mutual mistake of the parties thereto.

29. The mistake, consisting of the failure of said written contract to expressly provide (1) that the subject matter of the sale did not include the casing in any of the oil wells located on the land; and (2) that the plaintiff had no obligation, as a part of the work plaintiff agreed to perform under such contract, to abandon such oil wells or dismantle or remove or dispose of the casing contained therein, was not caused by or the result of negligence on the part of the defendant.

30. In view of the foregoing findings, it is unnecessary to make any finding concerning the proper construction or interpretation of said written contract dated January 17,

1941, either on its face or in the light of the surrounding circumstances.

31. There are no rights acquired by any third persons which would be prejudiced by a reformation of said written contract dated January 17, 1941.

Conclusions of Law. .

1. This Court has jurisdiction of the parties and of the subject matter of this action.

2. The written contract dated January 17, 1941, did not truly express the intention of the plaintiff and defendant in that it did not expressly provide (1) that the subject matter of the sale did not include the casing in any of the oil wells located on the land; and (2) that the plaintiff had no obligation, as a part of the work plaintiff agreed to perform under such contract, to abandon such oil wells or dismantle or remove or dispose of the casing contained therein.

3. The failure of the written contract dated January 17, 1941, to express truly the intention of the parties to the contract resulted from a mutual mistake of the parties thereto.

4. The failure of the written contract dated January 17, 1941, to express truly the intention of the parties to the contract resulted from the mistake of the defendant which the plaintiff knew and suspected at the time of the execution of the contract.

5. Defendant is entitled to have said written contract reformed to expressly provide (1) that the subject matter of the sale did not include the casing in any of the oil wells located on the land; and (2) that the plaintiff had no obligation, as a part of the work plaintiff agreed to per-

form under such contract, to abandon such oil wells or dismantle or remove or dispose of the casing contained therein.

6. In order to effectuate the agreement and intention of the parties, it is proper to add to said written contract dated January 17, 1941, the following paragraph as paragraph 15 thereof:

"15. The subject matter of this contract does not include the casing in any of the wells located upon Seller's land and the casing in such wells is expressly excluded from the equipment and facilities to be sold by Seller to Buyer hereunder.

Buyer shall have no obligation as a part of Buyer's work hereunder to abandon any of such wells, or dismantle, or remove or dispose of the casing contained therein; and Buyer shall not abandon any of said wells, or dismantle, or remove, or dispose of the casing contained therein."

7. Plaintiff is not entitled to have or recover anything from the defendant. Defendant is entitled to recover of and from the plaintiff its costs and disbursements herein.

Done in Open Court This 16 Day of November, 1943.

H. A. Hollzer

United States District Judge

Approved as to form.

PHILIP N. KRASNE and
CARL B. STURZENACKER

By Carl B. Sturzenacker

Attorneys for Plaintiff

[Endorsed]: Filed Nov. 16, 1943.

In the District Court of the United States, Southern
District of California, Central Division.

No. 1718-H

AARON FERER & SONS, a Co-partnership,

Plaintiff,

vs.

RICHFIELD OIL CORPORATION,

Defendant.

JUDGMENT.

The above entitled action having been tried and the Court having filed its opinion herein and entered its Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Rules of Civil Procedure, and being advised in the premises, upon consideration thereof.

It Is Hereby Ordered, Adjudged and Decreed as follows:

I.

That the plaintiff take nothing by its action.

II.

That pursuant to defendant's counterclaims the written contract between plaintiff and defendant, dated January 17, 1941, be and the same is hereby reformed by the addition of the following paragraph as paragraph 15 thereof:

"15. The subject matter of this contract does not include the casing in any of the wells located upon Seller's land and the casing in such wells is expressly excluded from the equipment and facilities to be sold by Seller to Buyer hereunder.

Buyer shall have no obligation as a part of Buyer's work hereunder to abandon any of such wells, or dismantle, or remove or dispose of the casing contained therein; and Buyer shall not abandon any of said wells, or dismantle, or remove, or dispose of the casing contained therein."

III.

That defendant recover its costs and disbursements herein from the plaintiff, to include the reporter's per diem fee and the cost of the original transcript furnished to the Court, to be taxed by the Clerk in the amount of Dollars (\$164.80).

Dated: November 16, 1943.

H. A. Hollzer

United States District Judge

Approved as to Form.

PHILIP N. KRASNE and
CARL B. STURZENACKER

By Carl B. Sturzenacker
Attorneys for Plaintiff

Judgment Entered Nov. 16, 1943. Docketed Nov. 16, 1943. C. O. Book 22, Page 44. Edmund L. Smith, Clerk, By L. Wayne Thomas, Deputy.

[Endorsed]: Filed Nov. 16, 1943.

[Title of District Court and Cause.]

NOTICE OF APPEAL.

Notice is Hereby Given that Aaron Ferer & Sons, the plaintiff above-named, hereby appeals to the Circuit Court of Appeals of the United States for the Ninth Circuit from the final judgment entered November 26, 1942 and from the whole of said judgment.

Dated: This 26th day of January, 1944.

CARL B. STURZENACKER and
PHILIP N. KRASNE

By Carl B. Sturzenacker
Attorneys for Plaintiff and Appellant.

[Affidavit of Service by Mail.]

\$500 Bond Filed

[Endorsed]: Filed & mailed copy to Robert E. Paradise & William J. De Martini, Defts. Attys. Feb. 8, 1944.

PACIFIC INDEMNITY COMPANY

M. R. Johnson, President

Los Angeles

San Francisco

621 South Hope Street

100 Sansome Street

Bond No. 113920

In the District Court of the United States, Southern
District of California, Central Division.

No. 1718-H Civil

AARON FERER & SONS, a co-partnership,

Plaintiff,

vs.

RICHFIELD OIL CORPORATION, a corporation,
Defendant.

COST BOND ON APPEAL.

Know All Men by These Presents, That Pacific Indemnity Company, a corporation organized and existing under the laws of the State of California, and duly licensed to transact business in the State of California, is held and firmly bound unto Richfield Oil Corporation, a corporation, defendant in the above entitled suit, in the penal sum of Five Hundred & No/100 Dollars (\$500.00), to be paid to the said Richfield Oil Corporation, a corporation, its heirs, executors, administrators, successors and assigns, for which payment, well and truly to be made, the Pacific Indemnity Company binds itself, its successors and assigns firmly by these presents.

Sealed with our seals and dated this 3rd day of February, A. D. 1944.

The Condition of the above obligation is such that whereas, the said Aaron Ferer & Sons, Plaintiff in the above entitled suit, is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from a decree made, rendered and entered on the 17th day of November, 1943, by the District Court of the United States for the Southern District of California, Central Division, in the above entitled cause.

Now, Therefore, the condition of the above obligation is such that if Aaron Ferer & Sons shall prosecute its said appeal to effect and answer all costs which may be adjudged against it if it fail to make good its appeal, then this obligation shall be void; otherwise to remain in full force and effect.

PACIFIC INDEMNITY COMPANY

By W. C. Bening
Attorney-in-Fact

Examined and recommended for approval as provided in Rule.

Carl B. Sturzenacker
Attorney

I Hereby Approve the foregoing bond Dated the
day of February, 1944.

.....
Judge or Clerk

[Verified.]

[Endorsed]: Filed Feb. 8, 1944.

[Title of District Court and Cause.]

APPELLANT'S DESIGNATIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON APPEAL.

To the Clerk of the District Court of the United States,
Southern District of California, Central Division:

Appellant, plaintiff in the above-entitled action, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in the above-entitled action:

1. Complaint;
2. Notice of Petition for Removal to United States District Court;
3. Petition for Removal to United States District Court with memorandum attached;
4. Bond on Removal;
5. Order approving foregoing bond;
6. Order for Removal to United States District Court;
7. Amended Complaint;
8. Defendant's motion to Dismiss Amended Complaint;
9. Affidavit of H. H. Kelley in Support of said motion to dismiss;
10. Order that said motion to dismiss be submitted;
11. Court's memorandum of conclusions and minute order denying motion to dismiss second count of amended

complaint and granting motion to dismiss first count without leave to amend;

12. Answer to amended complaint and defendant's counter claim and cross complaint thereto;

13. Plaintiff's motion for summary judgment, or if denied, for bill of particulars;

14. Affidavit of Morris Ferer and memoranda of points and authorities in support of the foregoing motion for summary judgment or bill of particulars;

15. Petition of defendants for order granting leave to take depositions of Morris Ferer and T. H. Clements;

16. Affidavit of Robert E. Paradise in support of said petition to take depositions;

17. Order for taking depositions of Morris Ferer and T. H. Clements;

18. Defendant's notice of taking deposition of David Zeidenfeld;

19. Affidavit of Robert E. Paradise re taking deposition of David Zeidenfeld;

20. Order shortening time for taking deposition of said Zeidenfeld;

21. Depositions of T. H. Clements and Morris Ferer (filed February 24, 1942);

22. Deposition of David Zeidenfeld (filed February 23, 1942);

23. Affidavit of F. I. McGahan, H. H. Kelly and Harold Davis in opposition to plaintiff's motion for summary judgment or bill of particulars;

24. Further affidavit of F. I. McGahan re plaintiff's last named motion;

25. Plaintiff's reply to defendant's counter claim and cross complaint;

26. Order that case stand submitted on motion of plaintiff for summary judgment;

27. Defendant's notice of motion for summary judgment;

28. Order, stands submitted, on motion of plaintiff for summary judgment;

29. Order denying plaintiff's motion for summary judgment or bill of particulars and vacating order submitting defendant's motion for summary judgment;

30. Order case stand submitted on merits;

31. Memorandum of conclusions and findings for defendant (May 29, 1943);

32. Minute order that defendant's counsel prepare findings and decree;

33. Plaintiff's proposed amendments to findings and conclusions of law;

34. Defendant's objections to the foregoing proposed amendments;

35. Memorandum of court's conclusions re proposed findings and conclusions of law;

36. Minute order that defendant's counsel submit revised findings;

37. Findings of fact and conclusions of law;

38. Order that said findings and conclusions be filed;

39. Judgment (November 16, 1943);
40. Plaintiff's notice of appeal with date of filing;
41. Cost bond with date of filing;
42. Two volumes of reporter's transcript of trial, being a complete record of the entire trial (September 3, 4, 9, 10, 11, 1942);
43. Plaintiff's exhibits 1, 2, 3 and 4, as filed;
44. Defendant's exhibits a, b, and c.

CARL B. STUZENACKER and
PHILIP N. KRASNE,

By Carl B. Sturzenacker

Attorneys for Plaintiff.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Feb. 16, 1944.

[Title of District Court and Cause.]

APPELLEE'S DESIGNATION OF ADDITIONAL
PORTION OF THE RECORD TO BE CON-
TAINED IN THE RECORD ON APPEAL.

To the Clerk of the District Court of the United States,
Southern District of California, Central Division.

Appellee, defendant in the above entitled action, files this designation of the following additional portion of the record to be contained in the record on appeal in the above entitled action:

1. Defendant's Motion for Summary Judgment, filed March 6, 1942.

(Appellant's original designation of the record contained as item No. 27 thereof "Defendant's Notice of Motion for Summary Judgment". Appellant's amended designation of the record, filed March 1, 1944, contained the following: "Item No. 27—Defendant's notice of motion for summary judgment—may be deleted".)

Dated: March 2, 1944.

ROBERT E. PARADISE
WILLIAM J. DeMARTINI
By Robert E. Paradise

Attorneys for Appellee, Richfield Oil Corporation.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 2, 1944.

[Title of District Court and Cause.]

APPELLANT'S AMENDED DESIGNATIONS OF
THE RECORD, PROCEEDINGS AND EVIDENCE
TO BE CONTAINED IN THE RECORD
ON APPEAL.

To the Clerk of the District Court of the United States,
Southern District of California, Central Division.

Appellant, plaintiff, in the above-entitled action, files this amended designations of the following portions of the record, proceedings and evidence to be contained in the record on appeal in the above-entitled action, and by this notice amends the original designation by deleting and amending the description of the following items:

Item No. 9—Affidavit of H. H. Kelly—may be deleted;

Item No. 27—Defendant's notice of motion for summary judgment—may be delited;

Item No. 30—Order case stand submitted—by amendment to read, "Order that the case be set for trial on its merits" in place and stead of the designation set forth therein.

CARL B. STURZENACKER &

PHILIP N. KRASNE

By CARL B. STURZENACKER

Attorneys for Appellant.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 2, 1944.

[Title of District Court and Cause.]

STIPULATION WAIVING RULE FOR FILING
TWO COPIES OF THE REPORTER'S TRAN-
SCRIPT AND TWO COPIES OF REPORTED
DEPOSITION.

It Is Hereby Stipulated by and between counsel for appellant and counsel for respondent that the rule of Court providing for the filing with the Clerk of two copies of the reporter's transcript and two copies of the reported deposition is hereby waived.

It Is Further Stipulated that the copy of the reporter's transcript now on file and the copy of the deposition now on file may be forwarded by the Clerk of the Dis-

trict Court to the Clerk of the Circuit Court of Appeals for the purpose of printing the transcript in the above matter.

Dated: This 15 day of March, 1944.

Philip N. Krasne,
Carl B. Sturzenacker,
Attorneys for Appellant.

Robert E. Paradise,
Attorney for Respondent.

Upon Reading and Filing the within Stipulation and good cause appearing therefrom,

It Is Hereby Ordered that the rule requiring two copies of the reporter's transcript and the deposition be waived and that the transcript and deposition now on file may be used by the Clerk of the District Court to forward to the Clerk of the Circuit Court of Appeals, for the purpose of printing the transcript in the above matter.

March 17, 1944.

H. A. Hollzer,
Judge.

[Endorsed]: Filed Mar. 17, 1944.

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME FOR THE
CLERK TO PREPARE TRANSCRIPT ON
APPEAL.

It Is Hereby Stipulated by and between counsel for the appellant and counsel for the respondent in the above-entitled matter that due to the necessity of having the clerk prepare a transcript and forward the same to the Clerk of the Circuit Court of Appeals and the time being short that the time for the Clerk to prepare and forward the transcript to the Clerk of the Circuit Court of Appeals is hereby extended to and including the 18th day of April, 1944.

Dated: This 15 day of March, 1944.

CARL B. STURZENACKER
PHILIP N. KRASNE

By Carl B. Sturzenacker
Attorneys for Appellants.

Robert E. Paradise
Attorney for Respondent.

Upon Reading and Filing the within Stipulation and good cause appearing therefrom,

It Is Hereby Ordered that the time for the Clerk to prepare and file transcript on appeal is extended to the 18th day of April, 1944.

March 17, 1944.

H. A. Hollzer,
Judge.

[Endorsed]: Filed Mar. 17, 1944.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 242 inclusive contain full, true and correct copies of: Complaint Declaratory Judgment; Notice of Filing of Petition for Removal and Bond and Notice of Application for an Order Granting Removal to the District Court of the United States, in and for the Southern District of California, Central Division & Petition for Removal; Petition for Removal to the District Court of the United States for the Southern District of California, Central Division; Bond on Removal; Minute Order of the Superior Court dated July 15, 1941; Order for Removal of Cause to the United States District Court: Clerk's Certificate to Removal Papers; Amended Complaint Declaratory Judgment; Motion to Dismiss Amended Complaint and Notice of Motion; Minute Order Entered November 17, 1941; Memorandum of Conclusions Dec. 29, 1941; Minute Order Entered December 29, 1941; Answer to Amended Complaint; Motion of Plaintiff for Summary Judgment or if denied, for Bill of Particulars and Notice of Motion; Petition for Leave to Take the Depositions of Morris Ferer et al with Affidavit of Robert E. Paradise in Support; Affidavit of Robert E. Paradise; Order; Notice of Taking Deposition of David Zeidenfeld; Affidavit of Robert E. Paradise; Minute Order Entered February 12, 1942; Affidavit of F. I. Mc-

Gahan in Opposition to Plaintiff's Motion for Summary Judgment or for Bill of Particulars; Affidavit of H. H. Kelly in Opposition to Plaintiff's Motion for Summary Judgment or for Bill of Particulars; Affidavit of Harold Davis in Opposition to Plaintiff's Motion for Summary Judgment or for Bill of Particulars; Further Affidavit of F. I. McGahan in Opposition to Plaintiff's Motion for Summary Judgment or for Bill of Particulars; Minute Order Entered February 24, 1942; Reply; Minute Order Entered March 6, 1942; Motion of Defendant for Summary Judgment and Notice of Motion; Minute Orders Entered March 16, 1942 and June 29, 1942 respectively; Minute Order Entered July 1, 1942; Memorandum of Conclusions May 29, 1943; Minute Order Entered May 29, 1943; Plaintiff's Exhibits 1, 2, 3 and 4; Defendant's Exhibits A, B and C; Plaintiff's Proposed Amendments to Findings of Fact and Conclusions of Law; Defendant's Objections to Plaintiff's Proposed Amendments to Findings of Fact and Conclusions of Law; Memorandum of Conclusions October 28, 1943; Minute Order Entered October 28, 1943; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Cost Bond on Appeal; Appellant's Designations of the Record, Proceedings and Evidence to be Contained in the Record on Appeal; Appellee's Designation of Additional Portion of the Record to be Contained in the Record on Appeal; Appellant's Amended Designations of the Record, Proceedings and Evidence to be contained in the Record on Appeal; Stipulation and Order Waiving Rule for Filing

Two Copies of the Reporter's Transcript and Two Copies of Reported Deposition; and Stipulation and Order Extending Time for the Clerk to Prepare Transcript on Appeal and Docket Appeal which, together with the Original Reporter's Transcript and Original Depositions of David Zeidenfeld, T. H. Clements and Morris Ferer constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$102.35 which sum has been paid to me by Appellant.

Witness my hand and the seal of said District Court this 15 day of April, 1944.

(Seal)

EDMUND L. SMITH,
Clerk,

By Theodore Hocke,
Deputy Clerk.

In the District Court of the United States,
for the Southern District of California,
Central Division.

Hon. Harry A. Hollzer, Judge Presiding.

No. 1718-H-Civil.

AARON FERER & SONS,

Plaintiff,

vs.

RICHFIELD OIL CORPORATION, a corporation,
Defendant.

REPORTER'S TRANSCRIPT.

of

TESTIMONY AND PROCEEDINGS ON TRIAL.

Appearances:

Carl B. Sturzenacker, Esq., and

Philip N. Krasne, Esq.,

For Plaintiff.

Robert E. Paradise, Esq.,

For Defendant.

Los Angeles, California, Thursday, September 3, 1942;
10 A. M.

(Case called.)

Mr. Paradise: Ready.

Mr. Krasne: If the court please, as the court knows, Mr. Sturzenacker is of counsel for plaintiff. He was due in from Sacramento this morning at 7:00 o'clock but the train, as so many trains, unfortunately, are these days, has been delayed. He thought he would be in court by 10:00 o'clock.

The Court: Did you say he is in town?

Mr. Krasne: No. He will be here when the train arrives. I would like to ask the court's indulgence for a few minutes awaiting his arrival. I know that he planned to be here and I know he thought he had given himself sufficient leeway to be here by 10:00 o'clock.

The Court: Have you communicated with his office or his home to ascertain whether he has arrived?

Mr. Krasne: I spoke to his office about a half hour ago and, also, Mrs. Sturzenacker called the office and said that the train had not arrived and that he expected to come directly here instead of going to the office; that she just guessed, from keeping in touch with the station, that it would be 10:00 o'clock before the train arrived.

The Court: I have this suggestion to make. Suppose we take a recess until 10:30 and in the meantime you may communicate with the depot to find out when the train is [2*] expected.

(Short recess.) [3]

Los Angeles, California, Thursday, September 3, 1942;
10:40 A. M.

Present:

Philip N. Krasne, Esq.,
For Plaintiff.

Robert E. Paradise, Esq.,
For Defendant.

The Court: I believe we are ready to go forward with the trial of this case of Aaron Ferer & Sons vs. Richfield Oil Corporation and that we are permitting the defendant to call a witness out of order.

*Page numbering at foot of page of original certified Reporter's Transcript.

Mr. Krasne: May I say, for the purpose of the record, that, while the court has indicated and counsel, likewise, has indicated that he desires to call Mr. Montgomery out of order, it was my understanding that the matter that was to be presented for trial this morning was the matter of the reformation of the contract; that the other issues with respect to the contract had previously been determined. I recall, if I am not in error, that it was the understanding that Mr. Paradise, on behalf of the defendant, would proceed under his counterclaim or cross-complaint; so that, in truth and in fact, he is really not calling Mr. Montgomery out of order but is proceeding to prove, I presume, the allegations in the counterclaim in which it is alleged the contract should be reformed. All of the other issues with respect to the contract, it seems to me, have previously been disposed [4] of by stipulations. Certainly, we are not now, with the understanding that has been had here for some time, going into collateral attacks on the contract itself.

The Court: I think it would be helpful for an observation to be made. When we came to consider the respective motions for summary judgment, the record on which included affidavits and depositions, evidence was developed which I think presents another aspect to the case. I have in mind particularly that the record as it was presented in support of these motions for summary judgment discloses circumstances surrounding or attending the execution of the contract. And, while I do not wish to be understood as having reached a final conclusion in the matter, I must say that I am impressed with this situation, namely, that a question has been raised in my own mind respecting the proper construction of this contract in the light of the circumstances attending and leading up to its execution as disclosed by the pres-

ent record. And I feel that the question of what should be the final construction of the contract should not be considered as foreclosed. While, prior to the submission of these motions for summary judgment and upon a consideration of the complaint itself, we did express certain views as to the meaning of the contract, I feel that I ought to point out to counsel that I am not convinced as to the correctness of that ruling in the light of the circumstances leading up to and attending the execution of the contract as developed by the present record. [5]

Mr. Krasne: I would certainly like to say this to the court, your Honor, and to state my position. If in fact this case is to be tried on all issues *de novo*, so to speak, and the previous indications of the court are not to be treated as rulings, then I certainly am not prepared this morning to try this case. I think I have quite properly been justified in my own mind from the many times that we have been before your Honor in this matter and from the rulings that have been made by your Honor to have concluded that all we were going to try this morning was the question of whether or not this contract should be reformed, the question of interpretation having been passed upon. Of course, I recognize that it is definitely within your Honor's province to change that ruling. On the other hand, I stand here very definitely prejudiced if I were to proceed on this other theory because I have long since dismissed from my mind, and I think quite justifiably, the question of the interpretation of the contract and going back and trying all of the issues *de novo*. I think it is one thing for the plaintiff to respond to the defendant's claims of an oral agreement and reformation

of a written agreement to conform to that. I think the defense on that score is an entirely different one than to try to prove the case from the beginning.

The Court: Let me make this clear. If at the close of the case, and I mean at the close of the introduction of evidence, and after consulting with your client, you are [6] satisfied that there is additional evidence that you consider can be produced and which you would desire to present, that opportunity will be afforded.

Mr. Krasne: The difficulty is that my whole attitude in this case with respect to the depositions and with respect to the stipulation that your Honor asked me to enter into about using the depositions would have been entirely different if I had not justifiably felt that this court had already passed upon the interpretation of that written contract. In other words, I sat back and let counsel go on the widest kind of a fishing expedition because I have never felt in my own mind so far as the record would ultimately be developed that a case of reformation could be established or proven.

I am in the position, in view of your Honor's frank statement now, still having in mind the interpretation of the contract, that I think I am entitled to try this case in an orthodox manner from the very beginning because I say to your Honor, very candidly, I think that my client has been seriously prejudiced by permitting the matter to go on as it has, relying upon certain rulings that the court voluntarily made. In the first instance, I didn't ask the court for the ruling on the interpretation of the contract. The court voluntarily made it. And in all of the discussions we have had, and we have been before your Honor on numerous occasions and I have had numerous meetings with counsel, this is the first time when

I am told that that ruling may not be the [7] ruling of the court. I have proceeded with this case counting upon that. I certainly would want to be relieved of my stipulations with respect to the contents of the depositions because I felt that the issue in this case had been narrowed down to an issue that I haven't been worried about in so far as the record is concerned.

The Court: To what stipulations are you referring?

Mr. Krasne: Your Honor requested counsel to stipulate the last time we were here that all of the affidavits and all of the depositions might be treated as evidence, subject, of course, to the right of further cross-examination and objections and so on and so forth. I say to your Honor that my attitude with respect to those depositions themselves would have been completely different if I had thought we were not considering the one narrow issue of reformation of the contract. And, had the indication of the interpretation of the contract not been made, I never would have been so presumptuous as to have filed a motion for summary judgment in this case and permitted the wide fishing expedition on depositions that has been made to try to show cause for reformation. I think that I am entitled to have the matter tried in an orthodox manner with a straight, clean-cut, record and I think I don't have it. I think I will have a very bemuddled record if I proceed the way the case now stands; and I would far prefer, even though it is my keen desire to try this case and get it disposed of, to let the matter go [8] over to a date when we can be heard fully and completely in the presentation of our case. If it is a matter of the interpretation of the contract and the other elements that are apparently still in your Honor's mind, I say I want to try this case from scratch. I want to

try it with that in mind, having gone through months of effort and briefs and work that was directed to only one issue because of the indication that that was what the case had been narrowed down to. I know your Honor, if you were standing where I am standing, could appreciate my position.

The Court: I think we can proceed with the trial of the case on the pleadings as they now stand. And, in the event that I should conclude that the case is to be disposed of on some issue other than the issues raised by the defendant affirmatively, I can set the matter down for further hearing so as to allow your client to have the time to present further evidence.

Mr. Krasne: To have the record straight, and so that I understand it, I understand that we are before your Honor this morning, under arrangements previously made, to try solely and only the question of reformation of the contract as alleged and set forth in the counterclaim and cross-complaint; that that is what we were supposed to be here to try this morning solely and only.

Mr. Paradise: I don't understand it in that light, your Honor, that is to say, it is my understanding from the court's [9] minute order that was made as a result of our last conference before the court that the issue to be tried this morning was whether this contract covered the casing in the wells and the other issue was to be deferred so that, if the court should decide the contract did cover the casing under either the complaint itself or under the counterclaim for reformation, the issue as to the amount of damages would be deferred. It was my understanding that the case was to be tried on the merits and the issue of the interpretation of the contract, as your Honor has pointed out, was determined at the time

of the motion to dismiss on the face of the complaint alone, and that that ruling was made entirely without prejudice, as I understood the court's ruling, to any showing that would be made by the defendant. The same evidence which the defendant is offering as a part of the issue of reformation will also be offered on the plaintiff's original case, that is to say, the interpretation of the contract. And I was going to inquire of the court, under the court's minute order of July 1, 1942, whether the court's order that the affidavits and depositions are admitted into evidence, subject to the qualifications as to cross-examination and objections, is they are not admitted both for the issues between the complaint and the defendant's answer as well as the defendant's counterclaim and reply.

The Court: Let me have the file, Mr. Clerk.

Mr. Paradise: As I say, it is the same evidence. [10]

The Court: It will be observed that, under date of June 29, 1942, a minute order was entered. It is rather brief and I think we ought to read it. "It appearing that plaintiff has filed a motion for summary judgment, or if denied, for a bill of particulars, that since the filing of said motion various affidavits have been filed on behalf of defendant in opposition to said motion and that in addition thereto several depositions have been taken on behalf of defendant, also that defendant has filed a motion for summary judgment upon the two causes of action set forth by way of counterclaim or cross-complaint in its answer, and good cause appearing therefor, it is ordered that plaintiff's motion be and the same is denied. It is further ordered that the submission of defendant's motion for summary judgment is vacated."

Then, it appears that counsel were before the court on July 1, 1942. At that time, according to the minutes, the following took place, "This cause coming on exparte, Philip N. Krasne, Esq., appearing for the plaintiff, Robert E. Paradise, Esq., appearing for the defendant; the court and counsel discuss the minute order of June 29, 1942, and the court makes a suggestion regarding the coming trial of this cause.

"Pursuant to stipulation of counsel, it is ordered that this case be set for trial on the merits; that at the trial the affiants that signed various affidavits in connection [11] with the respective motions for summary judgment be deemed to have testified on direct examination on the matters stated in the affidavits, subject to cross-examination, provided that the affiants are produced for cross-examination; and, also, that the deponents, whose depositions have been taken, be deemed to have testified to the answers given on the taking of their respective depositions, subject likewise to cross-examination without restriction because of those same witnesses having been previously upon cross-examination, and it is further ordered that proper objections to questions in the depositions may be made at the trial.

"Attorney Krasne asks that the court make a ruling on defendant's motion for summary judgment which is now pending.

"The court states that, it appearing that issues of fact have been raised on defendant's motion for summary judgment, it is ordered, that upon that ground alone, said motion be and it is denied."

While I shall still allow further time for the presentation of evidence, such additional evidence as plaintiff may wish to offer, I think it may fairly be said that the issues which were raised in connection with plaintiff's motion for summary judgment still remain issues in the case. Otherwise, we would have granted the motion. The fact that we denied the motion would indicate that they are still to be tried.

Mr. Krasne: Except, if your Honor please, the motion for summary judgment was predicated upon the fact that the [12] court had already ruled concerning the interpretation of the contract. All proceedings since the date that the court had ruled upon the interpretation of the contract I would say, in so far as both sides of this case are concerned, were predicated upon the fact that the court had already interpreted the written contract.

The Court: I don't think you need to argue that point further because I have already indicated that, in view of **the fact that** you have labored under the belief that you were no longer concerned with the question of the proper construction of the contract, you would not be prejudiced so far as being afforded an opportunity of presenting such additional evidence as you think proper. But the fact still remains that when your motion for summary judgment was denied, in spite of the previous ruling respecting the construction of the contract, I think it may fairly be construed to indicate that issues of fact respecting the execution of that contract had been raised in connection with your motion for summary judgment which had to be tried. I think among those issues of fact was what were the circumstances leading up to and attending the execution of the contract. However, you

will not be foreclosed from presenting the evidence that you think you would otherwise have presented had you not considered that those issues were closed.

Mr. Krasne: I should like at this time, in view of the statements made by the court, to be relieved of the stipula- [13] tion that I have entered into whereby the depositions and affidavits on file in this case were to be treated as evidence. I state to the court that, had I been as enlightened then as I am now, I would have refused to enter into the stipulation. I believe that my client under the circumstances has been prejudiced by my having made that stipulation and I ask at this time to be relieved of the stipulation so that we can have a record developed properly and without being encumbered by many collateral things that found their way into those depositions and affidavits.

The Court: May I ask how you will be prejudiced if those stipulations remain?

Mr. Krasne: I will tell your Honor why and how. Number one, having in mind, properly or improperly, one narrow issue, I felt that nothing sufficient had been developed in the depositions. I knew they were costly and I didn't buy a copy of them and I haven't studied them as minutely as I would if I had had in mind that the court might use some of the evidence in there to aid in an interpretation of the contract and I would have made different objections. I just have not protected my record because I didn't count on that issue and I do think that we are prejudiced.

The Court: You say that you have not purchased a copy of the depositions. You still have the right of cross-examining those witnesses. I understand under the stipulation they were to be produced here. [14]

Mr. Krasne: I know but I am in this position. Having been more or less requested to enter into that stipulation and having had one thing in mind, and that there are probably scores of statements in those depositions that may have a bearing upon the issue that your Honor has alluded to this morning, I will be charged with carelessness so far as my client is concerned for having allowed things in the record that don't belong there. I haven't gone over these depositions with a fine-tooth comb to see what questions would be objectionable in the light of the attitude expressed by your Honor. In other words, I, unquestionably, have in this record today dozens and dozens of questions that are objectionable and I am not prepared to go through them now and to make the proper objections or to proceed on a theory that is wider than just the question of reformation. And I think it would be highly unfair. Your Honor knows as a practical matter, as your Honor has practiced law, that, when you get into a counsel's room and you take depositions, you have only one thought in mind, and you say, "O. K.; let them go ahead and get their story." I assure your Honor it would have been entirely different if there had been more issues than one to be determined at the time those depositions were taken. And I do say to your Honor, quite frankly, that I think we would be prejudiced and I would far rather let this case go over and try the case from the beginning, as if your Honor had never determined the contract matter, and start from scratch. [15] Then I feel I could present a case entirely different than I can now. And I am afraid we will be in a position, in any event, of not getting through now. Your Honor indicated, I believe, that there were two days available to us in this particular part of your calendar. Or am I in error?

The Court: That is correct.

Mr. Krasne: We have always considered there was to be just that one issue. I tell your Honor, frankly, I don't want to try the case in this limited period if there are still a lot of issues open. I would like very much to have the opportunity to try this case from scratch. The case is too important and I think I have handled it very badly for my client but I think with some degree of justification because of the manner in which we have proceeded.

The Court: Don't you think, Mr. Krasne, that, if during the course of the proceedings, such as the taking of depositions, facts are developed which throw light on either the construction of the contract or the determination of any other issue in the case, we are all expected to take note of such evidence?

Mr. Krasne: Yes; I think so if I understand your Honor.

The Court: Whatever the legal effect of that evidence may be, I think we are all expected to give heed thereto.

Mr. Krasne: The only difficulty that arises is I recall distinctly urging your Honor to make a different order with respect to the defendant's motion for summary judgment than [16] you had originally made. In other words, I explained to your Honor, whether it was because of my stupidity or not, I didn't know what your Honor meant or what the effect was of ordering the submission of the motion vacated. I felt, if we were talking about going to trial on the merits, your Honor

should make a ruling; and then again your Honor left me guessing. I tried to almost plead with your Honor, discreetly, to have your Honor let me know what you had in mind because we were trying to get ourselves ready for trial, and you finally made an order that I still didn't understand the significance of. Apparently, the thing that was in your Honor's mind then was that which you have expressed this morning. And, if your Honor had expressed yourself that way on that occasion, I assure you, because I would have felt I owed it to my client, I would not have responded to the request to stipulate with respect to these depositions. I just wouldn't have done it. There was no need for it. The witnesses are here and the people are here and I would rather have them testify before your Honor. That is the position I find myself in. I think no great harm could be done. It might take another few days of trial and we might have to wait for a time when it would be available. But I think, in the interests of justice, that is the fair thing to be done and that is my request to the court. And I think that I should be relieved of the stipulation that was entered into based upon what I feel was a misunderstanding at the time it [17] was entered into.

Mr. Paradise: If I may say a word, your Honor, I think that perhaps Mr. Krasne has exaggerated the difficulties he finds himself in, that is to say, the plaintiff's motion for summary judgment was made after the answer was on file. The motion to dismiss was made at a time before the defendant had filed any answer and

the court's ruling was made on that motion and the court made an interpretation of the contract based upon the bare record, which said that it was without prejudice to answer. Then the defendant filed its answer denying all of the allegations of the complaint and also setting up two causes of action for a counterclaim. It was at that time that the plaintiff chose to make its motion for a summary judgment, which was not solely directed against the counterclaim for reformation but was also directed to the entire answer which denied the allegations of the complaint. It was at that time that the depositions were taken and I assure the court that the same questions which Mr. Krasne said that he did not object to at the time of the taking of the depositions would have been asked and sought into at the time of those depositions, even though there had been no question of reformation of the contract.

It is the position of the defendant, if the court please, that the contract has an ambiguity in it, either apparent on the face of the contract or an extrinsic ambiguity, and that all of the evidence that has been elicited in the depositions [18] is admissible under the parol evidence rule both as to the cause of action as stated in the complaint and as denied in the answer and also as to the issues raised on the counterclaim. The court's minute order of July 1 states that the depositions have been admitted into evidence subject to proper objections to questions and, of course, that is in line with the rule of court that at the time of the taking of depositions no objections

need be made to inadmissible evidence, that is to say, the objections could be made in court. And the only objection that counsel could have in mind, when he says that he didn't object at the time of the depositions, is an objection to admissibility under the parol evidence rule. I assure the court that the questions and answers would have been the same. So I can't, if the court please, see the difficulty that the plaintiff finds itself in or any prejudice that has occurred to the plaintiff.

The Court: I am not disposed to make any ruling that will appear to be arbitrary. It occurs to me that, since there is not likely to be any time available to try this case until next January, a continuance to that time should, nevertheless, leave the stipulations as they now stand. A continuance for such a lapse of time would, obviously, allow the plaintiff more than a reasonable period of time within which to examine the depositions that are on file here, and, of course, you have copies of the affidavits, and to prepare to present such objections as the plaintiff may think proper, [19] and, also, to prepare to cross-examine fully. I think that it could very easily result in prejudice if the order made on July 1 were modified and still delay the trial for some four months. In other words, the plaintiff will have then more than ample time within which to present evidence and prepare for the cross-examination of the witnesses whose affidavits and depositions have been received as evidence in chief and, likewise, more than ample time within which to present objections to the evidence thus given in chief. As a matter of fact, I would think that the plaintiff at

least has already had the benefit, if not the advantage, of knowing the contentions which the other side is making as to the legal effect of the evidence offered in support of the defendant's motion for summary judgment and in opposition to the plaintiff's motion for summary judgment. So I think that, to remove any doubt in the matter as to whether or not the plaintiff has been misled and thereby failed to make due and adequate preparation for trial, the proper thing would be to leave the order of July 1 and the stipulations referred to therein stand and fix another trial date.

Mr. Krasne: I know I have spent too much time already on this and I don't want to appear to be argumentative but I don't see why, if we are going to try this case, it would do any harm for me to have the opportunity of having questions propounded and objections made when they are propounded and have a regular orthodox record in this case. I don't [20] think that enough is to be gained on the point of whatever little time might be saved by using the affidavits and depositions as evidence to justify even making me worry that those depositions should not be in there because I make the positive statement to your Honor that I just never would have entered into that stipulation had your Honor said the same thing on that occasion as you have said this morning. I don't know why the other side would be prejudiced. They have these depositions attacking the credibility of witnesses but I don't know why I should not have the opportunity of just having a straight orthodox record in this case, questions being asked and objections being made and then the questions answered.

I don't know if your Honor appreciates the task that is now put upon my shoulders of going back through those depositions and trying to analyze that thing tech-

nically and coming in here with one wholesale list of objections at the time of trial and, in order to get a record, read the questions and make the objections to protect my record. I think that it doesn't do the court enough good in the interests of time or counsel enough good to saddle me with that burden and that unorthodox method of trying this case. I just plead with your Honor to relieve me of the stipulation, that was made under a misunderstanding, that I don't think we should be charged with.

The Court: Am I correct in understanding that Mr. T. H. [21] Clements has some interest in this lawsuit?

Mr. Krasne: Yes; he has.

The Court: So far as the depositions of Mr. Clements and Mr. Morris Ferer are concerned, I see no reason why any complaint should be made about leaving the record as it is, subject to the right of interposing such objections or asking such further questions as you think proper, because they are clearly parties in interest; and, if they have anything additional to testify to, the opportunity will be afforded. I don't think that parties to a lawsuit may properly complain about having their depositions made a part of the record in the case.

Mr. Krasne: No; I don't think that is as objectionable as the other. Of course, I think, in connection with the use of depositions bodily in a record, there should ordinarily be some reason for doing it that way.

The Court: I notice that there is also a further deposition, that of Mr. David Zeidenfeld. Is Mr. Zeidenfeld in the courtroom? If so, will you stand up? What is your age?

Mr. Zeidenfeld: 33.

The Court: Are you single or married?

Mr. Zeidenfeld: Married.

The Court: Are there any children?

Mr. Zeidenfeld: Yes, sir.

The Court: Of course, there is the contingency that, by delaying the trial, Mr. Zeidenfeld may, through the fortunes [22] of war, which we hope not, be unavailable here.

Mr. Krasne: That is quite true and I think under any such circumstances depositions would be useful. But here is an array of men who signed the affidavits and they are all available and here is a man in the courtroom who will probably be available. I just want to put them on the stand.

The Court: I want to avoid, in any event, this sort of a situation. We have all had, of course, sufficient experience to realize that there is nothing more uncertain than life itself and I don't want to be confronted with an application for any further postponement, when the case is called next January, because of those very contingencies that all of us recognize may intervene between now and the time of trial. I am inclined to think that I ought to at least indicate that I will reconsider the question as to these other parties who will be expected to be here, and I am inclined to think when they are here that we can then more readily and more safely vacate that portion of the order of July 1 which involves the affidavits of those persons. I don't want the case left in such shape that, because of some unforeseen and

unpredictable contingency that might arise during the intervening period, the record will be virtually a blank. I am inclined to be sympathetic to your motion as to all of the other deponents and affiants but I don't want to make such a ruling now since we do not know how many of these people will be here. [23]

Mr. Krasne: Do I understand your Honor to mean that when we come here for trial I am to find out then whether or not I have in the record these affidavits and depositions or can't we decide that now? I wouldn't know how to prepare under those circumstances. In other words, why shouldn't the shoe be put on the other foot? Why shouldn't I be relieved of my stipulation now if it appears at the time this matter is set for trial that any of the witnesses who have signed affidavits or whose depositions have been taken are not available? Then why wouldn't it be a proper thing for Mr. Paradise to come in and present those circumstances and say, "Therefore, why shouldn't I be entitled to use those affidavits and depositions?"

The Court: Because you are now free to cross-examine those persons and they are now in the courtroom. In fact, I am willing to go to this extent, that, assuming that those affiants can be here at that time, I will vacate the order to the limited extent of requiring their evidence to be given in chief on the stand.

Mr. Krasne: If they can be in court—

The Court: In other words, if they remain away through their own fault or the fault of the defendant, I would consider that they would not be entitled to the benefit of the existing order.

Mr. Paradise: I can tell the court right now that Mr. Davis in all likelihood will not be available. Mr. Davis is [24] one of those who has filed an affidavit. Mr. Davis received notice of the fact this morning that he has been put in Class 1-A of the draft and he will in all probability not be available. But Mr. Davis, in response to the court's order, is present in court this morning.

The Court: Which is Mr. Davis?

Mr. Paradise: Mr. Davis, will you stand up?

The Court: What is your age, Mr. Davis?

Mr. Davis: 37.

The Court: Are you single or married?

Mr. Davis: Single.

The Court: Hadn't you better determine say to cross-examine Mr. Davis either this afternoon or tomorrow morning?

Mr. Krasne: I would appreciate that under the circumstances very much. I would like to do that.

The Court: You might do this. You might cross-examine Mr. Davis this afternoon. And I have this further suggestion to make. I would be disposed to have you borrow either the original deposition of Mr. Zeidenfeld or, if counsel has no objection, you may use his copy.

Mr. Krasne: Mr. Paradise has already loaned it to me, your Honor, on occasions when I have requested it.

The Court: Yes. So that you might cross-examine Mr. Zeidenfeld in the morning, so that at least to that extent—

Mr. Krasne: With respect to Mr. Zeidenfeld, here is the situation where he is now available and I think that there [25] would be no reason why the stipu-

lation with respect to his deposition should not be vacated and put Mr. Zeidenfeld on the stand and ask him all of the questions and get his answers. I don't think it would take any longer. We would almost have to do it from the beginning. If your Honor has read that deposition, you will know what I mean.

The Court: I am inclined to even think that that might be done, in other words, that Mr. Zeidenfeld might be interrogated in chief and cross-examined tomorrow and simply reserve this afternoon for your cross-examination of Mr. Davis.

Mr. Paradise: Does the court desire to hear the evidence of Mr. Montgomery at this time? Mr. Montgomery's testimony will tend largely both to the question of reformation as well as to the interpretation of the contract and the surrounding circumstances, that is to say, the intention of the defendant. I suggest that solely for this reason. The court's order pertains to those who have made affidavits and those whose depositions have been taken, and that, if they are not available at the time of trial—that is to say, that there will be evidence provided they are available at the time of trial. I don't know whether Mr. Montgomery will be subject to the draft or not but at least he is available at this time. And, if the court should postpone the case until sometime in January, he may not be available. Does the court wish to hear Mr. Montgomery's testimony at this time? [26]

The Court: Let me inquire. Mr. Montgomery, would you mind telling us your age?

Mr. Montgomery: 51.

The Court: I don't think there is any real danger of

Mr. Montgomery being called into the service. I think, if there is time available say tomorrow afternoon, then, if you wish to put Mr. Montgomery on, you might do that, but I think we ought to dispose of, first, the cross-examination of Mr. Davis, which will be this afternoon, and then devote tomorrow morning to the direct and cross-examination of the witness Zeidenfeld.

Mr. Paradise: Mr. Davis' affidavit I think is some three or four pages in length. I don't know how long Mr. Krasne's cross-examination might take but, in the interests of expediency, if we have further time this afternoon, could the testimony of Mr. Zeidenfeld continue right on or would you prefer tomorrow morning?

Mr. Krasne: It is entirely possible we will finish with Mr. Davis before the afternoon is over, isn't it, and we can start with Mr. Zeidenfeld?

The Court: Very well; we will do that. We will ask Mr. Davis and Mr. Zeidenfeld to return at 2:00 o'clock this afternoon, and Mr. Montgomery can be excused until tomorrow. Do you think that we will conclude with the testimony of both Mr. Davis and Mr. Zeidenfeld this afternoon?

Mr. Krasne: I hardly think so, although there is a [27] possibility of it.

The Court: Would it make any difference whether Mr. Montgomery held himself available for tomorrow morning?

Mr. Paradise: That will be satisfactory.

The Court: Very well; the matter of the trial will go over until 2:00 o'clock this afternoon. [28]

AFTERNOON SESSION
2:00 O'CLOCK

Present:

Carl B. Sturzenacker, Esq., and
Philip N. Krasne, Esq.,
For the Plaintiff.

Robert E. Paradise, Esq.,
For the Defendant.

Mr. Paradise: Mr. Davis is available for cross-examination, your Honor, under the court's minute order.

The Court: Very well. Come forward and be sworn, Mr. Davis.

HAROLD E. DAVIS,

a witness for the defendant, being first duly sworn, testified as follows:

Q. By the Clerk: What is your full name?

A. Harold E. Davis.

Cross-Examination

Mr. Sturzenacker: May it please the court, I apologize for not being here this morning but, unfortunately, the Southern Pacific is a little bit late these days and they are going to be later probably as time goes on. [29]

If your Honor please, before starting the cross-examination, which will be based upon the affidavit, that is, cross-examination as to the statements made in the affidavit, we wish to move to strike certain portions of the affidavit of Mr. Davis heretofore filed. Beginning on line 25 of page 1, "That, on or about the month of August, 1940, he notified Mr. McGahan, the storehouse su-

(Testimony of Harold E. Davis.)

pervisor of Richfield Oil Corporation, that the management had decided to sell certain of the surface equipment at Casmalia and requested Mr. McGahan to notify prospective bidders that such surface equipment, with certain exceptions, would be made available for sale," I wish to strike that.

The Court: I don't think it is of any consequence. It sounds like an introductory statement. I think it must be perfectly obvious, when a corporation undertakes to sell some of its assets, that one or more of its employees have done something of this kind. So that may go out.

Mr. Sturzenacker: Then, beginning on line 31, "That shortly thereafter affiant asked Mr. R. D. Montgomery, head of the Exploitation Department of Richfield Oil Corporation, which, if any, of the surface equipment at Casmalia Mr. Montgomery desired to have left remain on the property. Mr. Montgomery informed affiant that he wanted to have the large storage tanks remain on the property in case the management should determine to open up for production any of the wells on the land." That is on the same grounds and, further, [30] that it is hearsay.

The Court: It is really hearsay. I don't think it makes a particle of difference in the outcome of the case what these gentlemen said amongst themselves. That is ordered stricken out.

Mr. Sturzenacker: Now, on page 2, line 24, beginning with the words "That the meeting had been called for the purpose of discussing the terms of the proposed contract between Richfield and Aaron Ferer & Sons," on the ground that that is a conclusion.

(Testimony of Harold E. Davis.)

The Court: I am inclined to think that that is about all that can be said of that statement. Do you see anything there, Mr. Paradise, that is material and essential?

Mr. Paradise: It was only to bring out the fact, if the court please, that the contract or the negotiations for the contract were still in their preliminary stage.

The Court: Doesn't that appear from other evidence, both the depositions of Mr. Morris Ferer and Mr. Clements?

Mr. Paradise: I think that is quite right, your Honor. And, when I said preliminary, I didn't mean preliminary in the sense of what had gone before that was unimportant but that the negotiations had not prior to that time been completed.

The Court: That may be stricken out.

Mr. Sturzenacker: And, on page 3, line 26, beginning with the word "That" after the words "metal and lumber"; [31] "That affiant did not intend that there be included in the sale the casing in any of the wells on the property." I move that that be stricken as strictly a conclusion of the witness or the person making the affidavit, who is now a witness.

Mr. Paradise: I object to the striking of that. That is the ultimate fact.

Mr. Sturzenacker: That is what the court is going to have to decide in this matter and not what the witness can testify to. It is a legal conclusion.

Mr. Paradise: If the court please, if Mr. Sturzenacker's theory is that the witness can't testify as to what his intentions were, then, obviously, the matters

(Testimony of Harold E. Davis.)

that Mr. Sturzenacker has requested be stricken, such as his conversations with the department heads of Richfield, which prove his intentions by what he said at that time, must, nevertheless, remain in. In other words, intention must be proved in one of two ways and, if one of them is a conclusion, then the other is proper evidence.

The Court: My present view is that what the parties did by way of action, that is to say, their acts, their conduct and the words exchanged between them, constitutes the basis upon which the intent should be drawn. Of course, it is true that in a criminal case a man is permitted in his own defense to assert what he did or did not intend to do which has evidentiary value. I must say that, in studying the case, I found nothing of value in that statement. In other [32] words, I couldn't bring myself to give it any weight because the man stated that he didn't intend to do a certain thing. I shall strike it out.

Mr. Sturzenacker: On page 4, the last paragraph, beginning with line 10, I think that perhaps the observation would be the same as to this particular statement. It is more of a negative statement. "That at none of the meetings or conversations with either Mr. Ferer or Mr. Clements was there any mention whatsoever of the casing in any of the oil wells on the property or of the abandonment by Aaron Ferer & Sons of any of the oil wells on the property."

The Court: I can't follow you there. I think a witness is permitted to testify as to what did transpire and as to whether a certain thing did not take place at a meeting.

(Testimony of Harold E. Davis.)

Mr. Sturzenacker: I think you are right on that, your Honor. The only grounds for striking that would be that it is surplusage probably. That is all of that.

Q. By Mr. Sturzenacker: Mr. Davis, your exact title with the Richfield Oil Corporation is what?

A. Buyer.

Q. What? A. Buyer.

Q. In the purchasing department?

A. That is right.

Q. And who is in charge of that department?

A. Mr. H. H. Kelly. [33]

Q. And you are his assistant?

A. I am one of the buyers.

Q. You are one of the buyers? A. Yes, sir.

Q. And as part of your duties you state that you have something to do with the sale or the preliminary negotiations for the sale of salvage and worn out equipment? A. That is right.

Q. You are familiar, of course, with this equipment that is in issue here at Casmalia? A. Yes, sir.

Q. Did you ever see it? Yes, sir.

Q. When was the first time you were on the ground? Do you recall?

A. In September of 1941, or I mean 1940.

Q. 1940? A. Yes, sir.

Q. May I ask how long have you been with Richfield? A. Since 1927.

Q. And during the time that you have been with Richfield has at all times the Richfield Company owned the property at Casmalia?

A. Either Richfield or their predecessors.

(Testimony of Harold E. Davis.)

Q. Do you have any idea when Richfield did acquire it?

A. I believe it was sometime in 1928 or along about [34] that time.

Q. And they acquired it from the Pan American Oil Company? A. Yes, sir.

Q. Do you have any knowledge, Mr. Davis, as to whether or not this equipment, either the wells or the refining equipment, was ever operated by Richfield?

A. I can't answer. I don't know.

Q. Do you mean by that you don't know whether they were or were not?

A. I don't know whether they were operated by Richfield or were not operated by Richfield.

Q. Were you ever informed by anybody—I will withdraw that question. Did you ever do any buying or furnish any supplies for either the producing or refining units at Casmalia?

A. A lot of our material is bought and put in warehouse stocks and the ultimate use of it, of course, we don't know exactly.

Q. You wouldn't know whether or not it went to this particular unit or not? A. Not necessarily.

Q. You have no recollection of ever buying any equipment that was delivered directly to that location, have you?

A. Only since the property has been idle.

Q. Do you mean since Mr. Ferer had this contract and [35] started to work cleaning up the place? Is that it?

A. Well, I think probably sometime within the last three or four years we have sent a nipple or an ell or some other fitting up there to be installed.

(Testimony of Harold E. Davis.)

Q. Do you have any knowledge of whether or not the wells have been operated or the producing unit has been operated at all since Richfield has had possession of it?

A. No, sir.

The Court: Is there any controversy about that?

Mr. Paradise: No; there is no controversy about that. I will stipulate that the wells haven't been operated since October, 1925.

Mr. Sturzenacker: We will accept that stipulation.

Mr. Paradise: It is either 1925 or 1926. I am not sure which date it is.

Mr. Sturzenacker: Anyway, prior to the time Richfield acquired it?

Mr. Paradise: That is right.

Mr. Sturzenacker: And is that true also of the refining equipment, Mr. Paradise?

Mr. Paradise: I don't know, Mr. Sturzenacker. I think that is true. And, to clear up one further point so the record will be clear, the Casmalia property, I think, belonged to the Pan American Petroleum Company, the stock of which was acquired by Richfield Oil Company of California in 1929. [36]

Mr. Sturzenacker: Thank you.

Mr. Paradise: And the Richfield Oil Corporation acquired Pan American's properties in March of 1937 in connection with the reorganization under 77B of the Bankruptcy Act of Richfield Oil Company of California, which were proceedings in this District.

The Court: May I interrupt to ask the reporter to read from your notes the stipulation previously offered by Mr. Paradise?

(Record read by reporter.)

(Testimony of Harold E. Davis.)

Mr. Paradise: I might add just one more statement, your Honor. When I said had not been operated, I meant had not been operated for the production of oil from the wells.

Mr. Sturzenacker: That is satisfactory and thank you, Mr. Paradise.

Q. Now, Mr. Davis, prior to the time that—I will withdraw that question. When was the first time that you ever in your duties heard anything about selling any of the equipment on the Casmalia lease?

A. That is pretty hard to answer because it has been discussed over quite a number of years.

Q. Well, may I ask this, then, for the purpose of brevity? From whom do you receive your instructions to conduct negotiations for the sale of salvage?

A. Mr. Kelly.

Q. And when was the first time that you recall receiving [37] any instructions from Mr. Kelly to sell any salvage on the Casmalia lease?

A. Are you referring to this particular salvage in this case here?

Q. No; any salvage.

The Court: On this property?

Mr. Sturzenacker: On this property.

A. Well, that may go back—or I can't answer that question exactly.

Q. In your affidavit you state that, sometime in August, 1940, you notified Mr. McGahan, the storehouse supervisor of Richfield Oil Corporation, that the management had decided to sell certain salvage equipment at Casmalia. Do you recall that instance?

A. Yes, sir.

(Testimony of Harold E. Davis.)

Q. Prior to that time, had you been instructed at any time to sell any of the equipment or salvage up there?

A. I believe we had disposed of some of that a year or so—well, we had discussed selling it sometime before then. However, that is not in conjunction with this particular sale.

Q. Did you, yourself, sell it?

A. I conducted the preliminary negotiations for selling it.

Q. And do you know who completed the negotiations?

A. They were finally completed by Mr. Kelly.

Q. Who? [38] A. Mr. Kelly.

Q. By Mr. Kelly? A. That is right.

Q. With whom were those negotiations started?

Mr. Paradise: I am afraid I don't understand the question. As to what sale?

Mr. Sturzenacker: As to this sale that was finally completed with Mr. Kelly about a year previous to the Ferer contract.

Mr. Paradise: Do you mean for other equipment?

Mr. Sturzenacker: Yes.

A. With whom were negotiations started? Is that the question?

Q. Yes. Do you remember?

A. Some members of the production department but I don't know their names without reviewing the files.

Q. You didn't negotiate with anybody who was a prospective purchaser, did you? A. Yes.

Q. Who did you negotiate with? Do you know?

A. Mr. Anderson, a fellow by the name of Anderson.

Q. Mr. Anderson of Santa Maria?

A. That is right.

(Testimony of Harold E. Davis.)

Q. And Mr. Anderson finally bought some of the equipment there, didn't he? A. Yes; he did. [39]

Q. Do you know what equipment he purchased?

A. He purchased some of the tubing, sucker rods and pumps and some other obsolete equipment which we had in the wells and on top of the ground.

Q. That was equipment from the producing unit, was it? A. That is right.

Q. He didn't purchase any refining equipment?

A. Not to my knowledge.

Q. You say that was sucker rods and tubing. And by that you mean the production string, do you?

A. No. That is the tubing.

Q. Just the tubing? A. Yes.

Q. And you say some of the engines?

A. There was some equipment located on the surface. I don't recall what it was now.

Q. You hadn't been up there at the time?

A. That was prior to the time I made a trip up there.

Q. You were not familiar with what was there?

A. Yes; I was fairly familiar with what was there through correspondence that we had and inventories that were available.

Q. Did you have an inventory of those products?

A. We had an inventory.

Q. Do you know how many tons that inventory ran?

A. No; I don't. [40]

Q. Do you recall the price that Mr. Anderson paid for that? A. No, sir.

The Court: May I interrupt to ask what period this is to which you are now referring? Approximately when did the Anderson deal take place?

(Testimony of Harold E. Davis.)

A. I would say that the Anderson deal started sometime in the early part of 1940.

Q. By Mr. Sturzenacker: At that time did your inventory disclose that there were tubings and sucker rods in the various wells?

A. The information I had indicated that.

Q. I didn't get that answer.

A. I said the information I had indicated that; yes.

Q. And you sold Mr. Anderson all of the tubing and the sucker rods out of all of the wells?

A. All that he was able to recover.

Q. Did your information disclose to you that some of the wells on the property had been closed off and the casings pulled out? A. No.

Q. Were there any derricks on the wells that you know of? A. Yes, sir; there were.

Q. And what happened to those under the Anderson deal?

A. They were dismantled and burned. [41]

Q. All of them?

A. That was supposed to be the deal. All that were remaining were dismantled and burned.

The Court: May I ask the reporter to read the two preceding questions and answers?

(Record read by reporter.)

The Court: Do I understand your testimony to be that the transaction with this man Anderson of Santa Maria included selling to him all the sucker rods and tubing which could be recovered, together with some surface equipment, and that all the derricks were to be dismantled and burned?

(Testimony of Harold E. Davis.)

A. That is right; yes, sir. May I add the surface equipment in the immediate vicinity of the wells?

Q. By Mr. Sturzenacker: By that you mean the walking beam or the engines or anything else that might have been used in the producing of oil from those particular wells, is that right?

A. Whatever happened to be right there that was no longer of any value to us.

Q. Did your inventory indicate to you what kind of tubing or sucker rods were in these wells? A. Yes.

Q. And you buy tubing and sucker rods quite often for your company, don't you? Is that right?

A. Yes; I do.

Q. And was there anything about the sucker rods or [42] tubing that rendered them obsolete?

A. I don't remember.

Q. Had you been producing these wells at that time, this tubing and the sucker rods would have been used for production in those wells, wouldn't they?

A. That is more of an operating problem which we in the purchasing department are not familiar with.

Q. It is a little out of your realm, in other words?

A. Yes, sir.

Q. So far as you know, however, there was nothing about the tubing or the sucker rods that made them obsolete?

A. Only an indication that, if they were good, they wouldn't be selling them.

Q. That is, you would be using them somewhere else, is that it?

A. That would be our assumption.

(Testimony of Harold E. Davis.)

Q. I notice in your statement you state you sold him all of the tubes and rods that he could recover. Was there any reason that he couldn't recover all of the tubes and all of the rods from all of the wells?

A. It is possible that some of them might have been stuck and it would have cost him more to have pulled them or have fished for them than they would have been worth if they had been recovered.

Q. And you didn't require him to go after those that he couldn't pull out easily? [43] A. No.

Q. Do you know when he started to work on those wells and when he completed his work?

A. I would say it was sometime in the spring of 1940 that he started and that he finished sometime in the summer or late summer.

Q. And you are having in mind, of course, that you started negotiations on this sale of the remaining equipment on the premises to Mr. Ferer sometime in August, 1940? Having that in mind, would you say that he had finished before you started negotiations on the sale of this equipment or not?

A. Would you mind repeating that question?

Mr. Sturzenacker: I will withdraw the question.

Q. As to this equipment that Mr. Ferer bought, you stated in your affidavit that you started negotiations or notified Mr. McGahan about August, 1940. Now, at that time you notified Mr. McGahan you were going to sell this equipment which Mr. Ferer afterwards purchased on the Camalia lease, had Mr. Anderson finished his work of pulling the rods and tubes?

A. I don't know without checking the records.

(Testimony of Harold E. Davis.)

Q. Do you have in your possession at the office, Mr. Davis, an inventory of the equipment that you sold to Mr. Anderson and the price? A. Yes; we have.

[44]

Q. Did you make that deal yourself or did Mr. McGahan make it?

A. I don't think Mr. McGahan had anything to do with the deal.

Mr. Paradise: Would you like to see the contract covering that negotiation?

Mr. Sturzenacker: I would; yes.

Mr. Paradise: I will produce it later.

Mr. Sturzenacker: Thank you.

Mr. Paradise: On that basis, if the court please, that the contract is to be produced in court, I would like to move to strike the witness' answers with respect to the contract and the work which Mr. Anderson was to do under the contract as not being the best evidence and the contract will speak for itself.

Mr. Sturzenacker: That is satisfactory.

The Court: Yes. When the contract is produced, I think the motion should be granted.

Q. By Mr. Sturzenacker: Did Mr. Anderson do all of the work on the property that he was supposed to do under the contract?

A. He did to my knowledge.

Q. So far as you know, he did? A. Yes.

Q. On or about August, you stated that you notified McGahan that you were going to sell certain property at [45] Casmalia. Did you notify Mr. McGahan that there were any derricks still on the property?

(Testimony of Harold E. Davis.)

A. They were supposed to have all been burned in the early part of the summer of that year.

Q. You were up there in September of 1940?

A. Yes, sir.

Q. Were the derricks still up? A. No, sir.

Q. Were any of the derricks still up?

A. I didn't see any.

Q. Did you go all over the property?

A. No, sir.

Q. What portion of the property did you go over? Do you remember, Mr. Davis?

A. A portion around the refinery and the tanks that were to be retained and the dehydrator plant and where the superintendent's house is and a few of the wells in that particular area.

Q. Wells that were close to those particular units you have mentioned? A. Yes, sir.

Q. Did you go up the ravine where the wells are in the upper end of the property?

A. No; we didn't go up there that day.

Q. Do you know Mr. T. H. Clements?

A. I have met him; yes, sir. [46]

Q. You have known him for some time, haven't you?

A. He has been in my office three or four times, I guess.

Q. And when was the first time you met him? Do you recall?

A. I believe the first time I had seen Mr. Clements was when he came in my office with Mr. Ferer in the early part of 1941.

(Testimony of Harold E. Davis.)

Q. You had never met him before?

A. I don't think so.

Q. Do you remember meeting him in September of 1938, at which time he asked you if the Casmalia plant and refinery was going to be for sale shortly?

A. I don't remember that.

Q. And did you have any dealings with him between 1938 and the time he came in the office with Mr. Ferer?

A. That is possible.

Q. Do you remember selling him any refining equipment from Signal Hill?

A. Under the name of Clements?

Q. Either Mr. Clements personally or under his trade name of Refinery Equipment Company.

A. We might have but I don't know what it was or when, though.

Q. Do you remember selling him some refinery equipment that you had at Santa Fe Springs? [47]

A. I don't remember of it.

Q. Do you remember having some refinery equipment that you sold about that time or prior to the Ferer deal to somebody at Santa Fe?

A. Yes; we sold some equipment to somebody but it wasn't Clements as I remember.

Q. You don't recall who you sold it to?

A. It seems to me like it was a person by the name of Colin.

Q. Did you sell it all to him?

A. Well, I can't remember that. I would have to go back to the records.

(Testimony of Harold E. Davis.)

Q. And you did have some refinery equipment at Signal Hill?

The Court: Do you mean that was sold?

Mr. Sturzenacker: That was sold prior to the Ferer deal.

A. You are asking a very difficult question because we are continually selling material, naturally.

Q. I appreciate that. Did you ever hear Mr. Clements' name mentioned in connection with Mr. Colin?

A. No; but it is possible that he could have been involved in that deal.

Q. You have no recollection, along about October or November or December, of talking to Mr. Clements in your office in the Richfield Building relative to the sale of this Casmalia equipment? [48]

A. What year was that?

Q. 1940. A. In December of 1940?

Q. October, November or December.

A. In my office?

Q. In your office.

A. With Mr. Ferer, did you say?

Q. No; with Mr. Clements. To refresh your recollection, you stated in your affidavit that, on the 8th day of January, 1941, a meeting was held in your office, at which time Mr. Ferer and Mr. Clements were present. Now, I want to ask you and I am trying to find out whether you recall at this time of ever talking to Clements, prior to the 8th day of January, 1941, about the sale of the property at Casmalia.

A. No; I don't remember talking to him in my office. I have talked to him over the telephone.

Q. Do you remember talking to him over the telephone? A. Yes.

(Testimony of Harold E. Davis.)

Q. And about when was that conversation?

A. I didn't make a note of it and I have no idea when it was. It may have been probably in the fall of 1940.

Q. And what was said at that time about the Casmalia deal?

A. It was generally discussed but I can't recall what we talked about or what our discussions covered.

Q. Was anything said about Mr. Clements going up and [49] looking at the property?

A. Not that I know of.

Q. The first time you recall talking to Mr. Clements in your office, then, was with Mr. Ferer on the 8th day of January? A. Yes, sir.

Q. And that was the time Mr. Ferer paid the \$22,000 for the property, is that right?

A. That is right.

Q. Mr. Davis, prior to the time that Mr. Clements and Mr. Ferer came to your office on the 8th day of January, you were familiar with an offer that Aaron Ferer & Sons had made to purchase the Casmalia equipment?

A. Yes, sir.

Mr. Sturzenacker: Have you the original of that, Mr. Paradise?

Mr. Paradise: Is that in the notice to produce?

Mr. Sturzenacker: Yes. It is dated December 10th.

The Court: Shall we mark it either for identification or as an exhibit in evidence?

Mr. Sturzenacker: We would like to offer it as an exhibit, your Honor.

Mr. Paradise: I believe it is already in evidence as an exhibit to Mr. Ferer's deposition, is it not?

(Testimony of Harold E. Davis.)

Mr. Krasne: I think it was only marked for identification.

Mr. Sturzenacker: I have the copy and it was marked [50] for identification.

Mr. Paradise: The reporter's notes show that it was offered for identification and then admitted in evidence. It has been offered in evidence as Exhibit 2 in Mr. Ferer's deposition.

Mr. Sturzenacker: It is attached to the deposition, is it?

Mr. Paradise: Yes.

Mr. Krasne: Only a copy was offered at that time. Are you willing to stipulate that the copy, not being the best evidence, may, nevertheless, be admitted in evidence without objection because under our broad stipulation you would have the right to object to anything in the deposition if there was a ground.

Mr. Paradise: Oh, yes; I am satisfied with the letter. I just wanted to point out it appears in both places because it already has been offered.

The Court: We can mark it as both the plaintiff's exhibit and as a defendant's exhibit, then, and it may become Plaintiff's Exhibit No. 1.

Mr. Sturzenacker: I really didn't know it was introduced in evidence. If it was, I was wondering what I was doing with it in my file.

Mr. Paradise: Plaintiff's Exhibit No. 1, then, is the same thing as Plaintiff's Exhibit No. 2 in the deposition?

The Court: To avoid confusion, let's preserve the number [51] that it has and it will become Plaintiff's No. 2 in evidence.

Mr. Sturzenacker: O. K.

[PLAINTIFF'S EXHIBIT No. 2]

[Emblem]

Scrap Iron
and Metals

All Types
Waste Materials

AARON FERER & SONS

(Established Since 1895)

5585 East 61st Street

(At Slauson and Eastern Avenue)

Los Angeles, California

Telephone ANgelus 1-6141

December 10, 1940

Richfield Oil Corporation
555 South Flower Street
Los Angeles, California

Attention: Mr. H. E. Davis, Purchasing Department
Gentlemen:

We are pleased to submit our bid in the sum of Twenty-Two Thousand Dollars (\$22,000.00), to cover all tanks, pipe, valves, fittings, buildings, boilers, and all other materials now situated on your Casmalia refining and producing property, plus pipe line running from the aforesaid property to and including loading rack adjacent to the railroad track, one-half mile west, including boiler and other incidental materials. We exclude the following items:

(Plaintiff's Exhibit No. 2)

Superintendent's house, garage and building now used as a cow barn,

Main incoming water line, and such line as needed to supply house and cow barn,

Six large steel storage tanks, approximately 50,000 barrels each,

Six shell stills, plus one shell still bottom previously sold to the O. C. Fields Company.

Certain 4 Inch Tubes previously sold to the West Coast Oil Company.

Cashier's Check in the sum of Twenty-Two Thousand Dollars, (\$22,000.00), will be paid you within Ten (10) Days after notification of acceptance of this bid.

2—Richfield Oil Corporation—12/10/40.

Bidder desires six months' time within which to remove all of the above-mentioned merchandise; retains the privilege of leaving any brick, galvanized tanks and other debris which is not useable; but guarantees not to create any hazards for cattle by creating any pitfalls, other than those which now exist.

Hoping to have an immediate acceptance, favoring us with this material, we remain

Very truly yours,

AARON FERER & SONS

BY Morris Ferer

Morris Ferer

L.

[Stamped]: Received Dec. 11, 1940, 8 o'clock. Purchasing Dept.

[Stamped]: Plf's Ex. No. 2. Filed 9/3/42.

(Testimony of Harold E. Davis.)

Q. I show you a letter, dated December 10, 1940, on the letterhead of Aaron Ferer, addressed to Richfield Oil Company, and ask you if you are familiar with that letter.

A. Yes, sir; I am.

Q. Then, per the stipulation, it is the letter that has been introduced in evidence and has been marked?

A. Yes.

Q. Do you recall where you first saw that letter, Mr. Davis?

A. On my desk.

Q. I show you another letter, on the letterhead of Richfield Oil Company, signed by Mr. Kelly, that has heretofore been offered by the plaintiff as Exhibit No. 3 for identification, and ask you if you are familiar with that letter of January 2, 1941.

A. Yes, sir; I am.

Mr. Sturzenacker: We will offer this, may it please the court, in evidence, to bear the same number that it bore for identification, No. 3.

The Court: It will be so admitted and marked.

[PLAINTIFF'S EXHIBIT No. 3]

RICHFIELD OIL CORPORATION

Richfield Building Los Angeles California

January 2, 1941

Aaron Ferer & Sons

5585 East 61st St.

Los Angeles, Calif.

Attention: Mr. Morris Ferer

Gentlemen:

Confirming our telephone conversation of today, we hereby accept your offer, dated December 10th, in the amount of \$22,000.00, for all tanks, pipe, valves, fittings, buildings, boilers, tank car loading facilities and other material and equipment belonging to Richfield, located on our Soladino Lease in Casmalia, with the following exceptions:

Superintendent's house, garage and building now used as a cow barn.

Main water line and pipe line necessary to supply house and cow barn.

Six steel storage tanks, Co. Nos. PR-29230, 29231, 29238, 29239, 29240, 29241.

Six shell stills and two still bottoms, including connections and such firebrick at the location of the stills required by O. C. Field Gasoline Co.

Tubes and other equipment at the Retort previously purchased by the Mid-Coast Oil Company.

Twelve dehydrators belonging to Petroleum Rectifying Co.

It is agreed that you will furnish us with Cashiers Check in the amount of \$22,000.00 within ten days after date of

(Plaintiff's Exhibit No. 3)

this letter and that all tanks will be removed and debris disposed of and pits and ditches filled in, leaving property in a good clean usable condition.

Very truly yours,

RICHFIELD OIL CORPORATION

H. H. Kelly

H. H. KELLY, Purchasing Agent

HED:ad

[Stamped]: Paid 12530 1/7/41.

[Written on margin]: Plffs. Ex 3 for Iden. Dep of Morris Ferer, Aaron Ferer & Sons vs. Richfield. 2/7/42. Ross Reynolds, Notary Public.

Pltf's No. 3, Filed 9/3/42.

Q. By Mr. Sturzenacker: Now, I show you a piece of thin white paper, typewritten, marked "Sale of Materials and Equipment at Casmalia," which has heretofore been offered by [52] the plaintiff as Exhibit No. 1 for identification, and ask you if you are familiar with this memorandum or note. A. Yes, sir.

Q. Can you tell us who prepared this?

A. I did.

Q. This letter down at the bottom says, "H. E. D." Are those your initials? A. Yes, sir.

Q. And "January 8, 1941." Does that indicate the date when it was prepared? A. Yes, sir.

Mr. Sturzenacker: We would like at this time to offer this in evidence with the same number, Plaintiff's Exhibit No. 1.

The Court: It may be admitted and so marked.

[PLAINTIFF'S EXHIBIT No. 1]

SALE OF MATERIAL AND EQUIPMENT
AT CASMALIA

To Aaron Ferer and Sons, 5585 E. 61st St., Los Angeles

Payment: Cashier's or Certified Check in the amount of
\$22,000.00, payable in advance.

Material purchased for resale, Purchaser to be allowed
six months for removal.

Everything will be sold to the above with the exception
of the following:

1. 12 dehydrators belonging to Petroleum Rectifying Co.
2. Water pump, water storage facilities and water piping which services Superintendent's house and cow barn.
3. Superintendent's house and garage, & frame house PR-17318.
4. 6 shell stills and 2 extra still bottoms, including connections which are affixed thereto up to and including the first flange in the piping hook-up. (Previously sold to O. C. Field Gasoline Company)
5. Material and equipment sold to the Mid-Coast Oil Company, not yet removed from the property.
6. 6 tanks, Nos. PR-29230—Capacity 55,000 barrels

29231	"	"	"
29238	"	5,700	"
29239	"	10,050	"
29240	"	30,190	"
29241	"	37,250	"

(Plaintiff's Exhibit No. 1)

Purchaser shall remove all oil in tanks from the property, debris to be disposed of on the property by placing in the washed-out portions of a creek running through the Refining Property in such a manner that the normal course of the stream is not restricted.

The two large sumps on the North side of the above referred to creek across from the Refinery should be fenced

properly ~~finished~~, using salvage pipe for post and sand line for wire to prevent cattle from getting bogged down in the sumps during wet weather.

All ditches and pits should be filled in after removal of pipe and other equipment and left in safe condition.

Concrete buildings and foundations on the Refinery Property will not constitute a hazard and therefore can be left in place.

HED:ad

Jan. 8, 1941

[Stamped]: Plf's Ex. No. 1. Filed 9/3/42.

[Written on margin]: Plffs Ex 1 for Iden Ferer vs Richfield Dep of Clements 2-6-42 Ross Reynolds, Notary Public

Q. By Mr. Sturzenacker: Mr. Davis, calling your attention to Plaintiff's Exhibit No. 2, this offer, it says, "We are pleased to submit our bid in the sum of \$22,000 to cover all tanks, pipe, valves, fittings, buildings, boilers, and all other materials now situated on your Casmalia refining and producing property, plus pipe line running from the aforesaid property to and including loading rack

(Testimony of Harold E. Davis.)

adjacent to the railroad track, one-half mile west, including boiler and other incidental materials. We exclude the following items” and then appears “superintendent’s house, car barn”, and so forth. Did you have any inventory of that property on [53] the Casmalia lease at that time?

A. We had an inventory that was several years old.

Q. Was that the same inventory that you were speaking of a moment ago, that included the stuff that you sold to Mr. Anderson?

A. The particular inventory I am referring to was primarily a refinery department inventory.

Q. You have no inventory of the remaining producing property, is that right?

A. Well, there probably was one in the company but I didn’t have one in my possession.

Q. You were not familiar with it?

A. That is right.

Q. Were you familiar with all of the tanks that were on the property? A. In what respect?

Q. Well, did you know how many there were and what kind they were? A. No.

Q. You did know at that time when you received this bid from Mr. Ferer that your company was to reserve six large steel storage tanks? A. Yes, sir.

Q. There were how many storage tanks on the property? Do you recall?

A. I haven’t any idea. [54]

Q. There were more than six, however, were there not? A. Yes; there were.

(Testimony of Harold E. Davis.)

Q. As a matter of fact, there were more than 25, is that right? A. I imagine there were.

Q. These storage tanks were connected with the producing unit rather than the refining unit, were they not?

A. Which ones do you mean? All of them?

Q. Well, what were and what were not?

A. There were a few tanks immediately surrounding the refinery property which were used in connection with refining.

Q. And the rest of them?

A. I assume the rest of them were production tanks.

Q. And these six steel storage tanks that you reserved—do you remember where they were?

A. I believe that—let's see. I think most of them were on the north side of the creek, near the machine shop.

Q. Just north of the creek?

A. I believe they were. There might have been one of them south of the creek.

Q. All of the other property in this reservation, such as the stills and the 4-inch tubing, had previously been sold to someone else?

A. Will you repeat that question, please?

Q. I notice in the offer it says, "6 shell stills, plus one shell still bottom—" [55]

A. That is right.

Q. "—previously sold to the O. C. Fields Company", is that correct? A. That is right.

Q. Had you conducted that sale? A. Yes, sir.

(Testimony of Harold E. Davis.)

Q. And "Certain 4-inch tubes previously sold to the West Coast Oil Company"? A. That is right.

Q. Had you conducted that sale?

A. Is that the West Coast?

Q. That is what this offer says, yet that name doesn't sound quite right. Had you conducted that sale?

A. Yes, sir; I had.

Q. And you were reserving the superintendent's house and garage and the building now used as the cow barn?

A. That is right.

Q. When you were up there in September, was that building being used as a cow barn?

A. I don't know.

Q. Were there any cows around the place?

A. I didn't notice any.

Q. Was there any oil stored at that time in any of these tanks?

A. I think most of them had a little oil.

Q. And one of them had considerable oil that was sold [56] to the Casmite Company or stored for the Casmite Company, is that right? A. That is right.

Q. In this Exhibit No. 3, which is the letter of acceptance of January 2, I notice the steel tanks carry numbers. A. Yes, sir.

Q. Did you provide those numbers or Mr. Kelly or how are they provided? Do you know?

A. Those numbers were put on by the operating department.

Q. And 12 dehydrators, belonging to the Petroleum Rectifying Company, are mentioned in this acceptance. Do you know anything about those?

A. Only that they belonged to that particular firm.

(Testimony of Harold E. Davis.)

Q. And your company had never owned them?

A. That is right.

Q. This letter states as follows: "Confirming our telephone conversation of today." Did you have that telephone conversation? Do you remember having a telephone conversation, on or about the 2nd of January, with Mr. Ferer?

A. If I wrote the letter, I am sure I did.

Q. No; Mr. Kelly wrote the letter. It says, "Confirming our telephone conversation of today, we hereby accept your offer, dated December 10th, in the amount of \$22,000, for all tanks, pipe, valves, fittings, buildings, boilers, tank car loading facilities and other material and equipment belonging to Richfield, located on our Soladino lease in [57] Casmalia."

A. Yes; I had the telephone conversation.

Q. I notice the notation on the bottom of this—or it is signed by Mr. Kelly?

A. That is right.

Q. And it has the same initials?

A. Yes.

Q. And, therefore, you probably dictated the letter?

A. I dictated the letter.

Q. At this telephone conversation that you had with Mr. Ferer, did you talk to him about any other exceptions except those—I will withdraw that question. At this telephone conversation, did you discuss with Mr. Ferer excluding any other property from the sale except that mentioned in this letter of December 10, 1940?

A. I think not.

Q. Did you speak to him about these 12 dehydrators that were on the property but didn't belong to you?

A. I think that is covered in the letter, isn't it?

(Testimony of Harold E. Davis.)

Q. You don't remember having any conversation with him about it?

A. I might have but I don't remember the exact words of our conversation. But the letter was written immediately afterwards, which would indicate that we had covered everything in the letter.

Q. And the information that you got about the storage [58] tanks came to you from the producing department as to the numbers?

A. Yes, sir; that is right.

Q. When Mr. Ferer came into your office on the 8th of January, the day he paid the money and you made up this notation, from what note or memorandum did you make up this notation? I notice you have six shell stills and two extra still bottoms, whereas the original offer said six shell stills plus one shell still bottom.

A. What did the note say?

Q. The note says two extra still bottoms. Did you discuss that with Mr. Ferer?

A. Evidently we did because I believe that note was written when Mr. Ferer was there.

Q. He was present, as a matter of fact, while you dictated this and you handed it to him?

A. I think he was; yes.

Q. I notice also on this notation you stated, "Purchaser shall remove all oil in tanks from the property." That was oil that had been produced on those premises so far as you know?

A. As far as I know, it had been produced.

Q. It hadn't been stored there by Richfield so far as you know? A. I don't think so.

(Testimony of Harold E. Davis.)

Q. And "The two large sumps on the north side of the [59] above referred to creek across from the refinery should be properly fenced, using salvage pipe for posts and sand line for wire to prevent cattle from getting bogged down in the sumps during wet weather." Do you remember putting that in? A. Yes, sir.

Q. What were you using this property for when you sold this equipment to Mr. Ferer?

A. I don't know what it was being used for. Nothing, I presume.

Q. How did you happen to put in the clause that it was to be fenced so the cattle couldn't get into the sumps?

A. There may have been cattle grazing around there. However, that is a problem that is taken care of by the operating department again.

Q. Did someone in the operating department tell you to do that, Mr. Davis? A. Oh, sure.

Q. What is that? A. Yes, sir.

Q. In other words, that instruction would come to you from the operating department?

A. Yes, sir.

Q. You and the purchasing department were not interested in running cattle on this property particularly? That wasn't part of your job?

A. That is right. [60]

Q. You also added in here, "All ditches and pits should be filled in after removal of the pipe and other equipment and left in safe condition." Do you remember from whom you got that instruction?

A. I believe it was part my idea.

(Testimony of Harold E. Davis.)

Q. And that was to fulfill the previous clause relative to the instructions you had received from the operating department, their suggestion to prevent the cattle from getting bogged down in the sumps and so forth?

A. Yes, sir.

Q. You stated, "All ditches and pits should be filled in after removal of pipe." You knew that the pipes in Casimalia on the lease there that were to be removed were, some of them, below the ground, did you not?

A. Yes, sir.

Mr. Paradise: What pipes?

Mr. Sturzenacker: I don't know.

Q. Did you know that there were pits on the property in which pipe was located?

A. Pits in which pipe was located?

Q. Yes. You say here, "All ditches and pits should be filled in after removal of pipe."

A. It is possible in removing any pipe lines which were underground that pits and ditches would, naturally, be made which were to be filled in after those pipe lines were removed. [61]

Q. Do you know of any open pits that existed on the ground or on the lease that didn't have anything of salvage equipment in them?

A. I didn't make a complete personal survey of the property myself. So I don't know. There may have been some pits that had nothing in them except just it was a pit, is all.

Q. I understand this ground is rather uneven and sort of rugged, is that right?

A. That is right.

(Testimony of Harold E. Davis.)

Q. Was it possible for you to see on your trip up there, while you were examining the refining unit, pipe lines that ran from there to other tanks in the field?

A. Yes.

Q. Did you see any of them above the ground?

A. Yes, sir.

Q. And did you see any pipes coming out of tanks and entering the ground?

A. Yes, sir.

Q. And then you saw other tanks where the pipe line was coming up out of the ground and going into the tanks?

A. That is right.

Q. At this telephone conversation that you had with Mr. Ferer, do you recall what was said about accepting his bid?

A. No; I don't.

Q. But, in response to that telephone call, he and Mr. [62] Clements came to your office, is that right?

A. I believe a letter was written after that accepting his bid.

Q. That is right; a letter was written. And then they arrived at your office. And was anybody with them when they came?

A. All that I know of was just Mr. Clements and Mr. Ferer.

Q. And did you have any conversation with the two gentlemen at that time?

A. Yes, sir.

Q. And what was that conversation? Do you recall?

A. As I recall, Mr. Clements asked what our reason was for not selling the six remaining tanks or the six tanks which we were excepting, and I called Mr. Mont-

(Testimony of Harold E. Davis.)

asked him why he wanted to retain those tanks and he explained again to me that it was for the purpose of storing oil in the event of and when we might reopen some of the wells for production.

Q. You told that to Mr. Clements and to Mr. Ferer?

A. That is right.

Q. Was anything said then about the pipe line that ran up to those particular tanks?

A. I don't know whether it was said at that particular time but I know that the pipe lines connecting or inter-connecting those tanks were to remain on the property. [63]

Q. And the pipe lines up to the tanks were sold?

A. Up to a certain point.

Q. Well, how far up to a certain point? How high is up? In other words, how close to the tanks?

A. Those were marked on the property, I imagine, around three or four hundred feet away from the tanks except any pipe lines interconnecting those six tanks we were to retain.

Q. Did you make any note of the exclusion of those pipe lines leading to those tanks on either this note or in any conversation with Mr. Ferer? Did you tell him that those pipe lines to those tanks were to be excluded?

A. That certain portion of the pipe lines?

Q. Yes. A. I believe it is in the contract.

Q. You are familiar with the contract that was finally adopted, are you not? A. Yes, sir.

Mr. Krasne: Perhaps Mr. Paradise will stipulate that there was no exclusion for any of the pipe line running up to those tanks provided for in the contract.

(Testimony of Harold E. Davis.)

Mr. Paradise: No; that is not correct. They were excluded. I might perhaps save time, because there is no mention of that in the contract, by saying the exclusions are shown on the map, Mr. Sturzenacker, if you care to borrow that.

Q. By Mr. Sturzenacker: Will you glance through this contract, Mr. Davis, and show me if there is any place in the [64] contract that excludes the pipe lines running up to the tanks?

A. Here is one place, Mr. Sturzenacker.

Q. Where is it? A. Right here.

Q. You are pointing now to "and major suction and discharge oil pipe lines connecting such tanks approximately as indicated in red on the map attached hereto and marked Exhibit A"? A. That is right.

Q. Did you discuss with Mr. Ferer and with Mr. Clements those pipe lines when they were in your office on the 8th of January?

A. I imagine we did. We discussed the deal pretty much in general that day.

Q. Will you please give us the best of your recollection? Your imagination is good all right and I appreciate that you are trying to refresh your memory. But will you tell us whether or not the best of your recollection now is that you did discuss those pipe lines running to and from those tanks? A. I believe we did.

Mr. Sturzenacker: Mr. Krasne, was the map introduced heretofore? We were working with a map here in the courtroom one day.

Mr. Krasne: That was at Mr. Paradise's office in the taking of the depositions. [65]

(Testimony of Harold E. Davis.)

Mr. Sturzenacker: May I use this, then, Mr. Paradise?

Mr. Paradise: If it would be helpful to the court, your Honor, this original contract has the map attached to it and you may introduce it.

Mr. Sturzenacker: Good.

The Court: Shall we give that an exhibit number, then?

Mr. Sturzenacker: I think we might as well and refer to it.

The Court: Mark it, then, as the plaintiff's exhibit next in order. That will be No. 4.

The Clerk: Have we finished with the deposition numbers?

Mr. Sturzenacker: I don't think it was introduced in the deposition.

The Court: The clerk calls attention to the fact we may want to use Exhibit No. 4.

Mr. Paradise: That is Defendant's Exhibit No. 1, if the court please, attached to the other deposition.

The Clerk: That will be Plaintiff's Exhibit No. 4.

[PLAINTIFF'S EXHIBIT No. 4]

[Plaintiff's Exhibit 4 is identical to Exhibit "A" to Amended Complaint, heretofore printed at page 26 except for map attached to Exhibit 4, and is therefore omitted at this point.]

[Stamped]: Plf's. Ex. No. 4. Filed 9/2/42.

(Testimony of Harold E. Davis.)

Q. By Mr. Sturzenacker: Referring to Plaintiff's Exhibit No. 4, which is the original contract and the map attached thereto, I call your attention to some red lines around a circle, which is marked "Riveted steel tanks" and so forth. Are these tanks that are marked in red the six tanks that were referred to in the exceptions to the contract? A. Yes, sir.

Q. And the red lines leading from tank to tank are the [66] lines that you referred to that were excepted?

A. That is right.

Q. Calling your attention to the various other wells about the premises, were there any wells or any other tanks—I will withdraw that question. From any of these wells were there any pipe lines leading to any of the tanks?

A. I don't know.

Q. Well, were there any of these pipe lines excepted or did you discuss excepting any of the pipe lines from these other tanks or wells?

A. We discussed excepting the water lines that were to be used to serve water to the superintendent's house and the cow barn or, rather, the watering trough for the cattle and also the gas line which was to be used for bringing gas from one or more wells, whichever was necessary, in order to furnish the superintendent's house with gas.

Q. This is the superintendent's house that I am indicating here, is it not? A. Yes; that is it.

Q. And that was the house that was excepted and this is the barn that was excepted. And which is the pipe line, the gas pipe line, that is excepted?

A. This one.

(Testimony of Harold E. Davis.)

Q. The one running along from the portion near well No. 36?

A. I presume that is the number. It looks like it. [67]

Q. With the exception of that and the water lines you have indicated by the cow barn and so forth, were any other lines reserved from sale under this contract?

A. One thing is that we excepted any other extensions or any extensions to the gas line which might go to any other wells if necessary in order to have additional gas.

Q. Did any other extensions go from that to any other well? A. I have no record of that.

Q. You have no knowledge of it? A. No, sir.

Mr. Paradise: When you say lines, do you mean pipe lines, Mr. Sturzenacker?

Mr. Sturzenacker: I am speaking of pipe lines and I am speaking primarily of oil and gas lines and not water lines.

Q. There was also a line running from your property to a loading zone, was there not? A. Yes, sir.

The Court: May I interrupt to suggest that I shall have to meet with one of the other judges briefly and we will take a recess at this time?

(Short recess.)

The Court: You may proceed.

Mr. Sturzenacker: May I have the last question and answer, Mr. Reporter?

(Record read by reporter.) [68]

Q. It should be loading rack instead of loading zone, is that right? A. Yes, sir.

(Testimony of Harold E. Davis.)

Q. Do you know where that loading rack was, the general direction from this battery of pipes, for instance?

A. Well, I don't know which is north.

Q. I presume the top of the map is north.

A. I would say in a southwesterly direction.

Q. And that pipe line was included in the sale of equipment to Mr. Ferer?

A. Yes, sir.

Q. Do you know what the condition of that pipe line was?

A. No, sir.

Q. Do you know whether it was in good shape or bad shape?

A. No; I don't.

Q. There were other pipelines, were there not, running from these tanks that were excluded, with the red lines around them, from the various wells on the property or from various tanks situated near the wells on the property?

A. That were excluded, did you say?

Q. No. There were pipelines running from tanks in various portions of the field to these tanks that were excluded?

A. I don't believe so. I believe that the lines that were excluded were the interconnecting lines here. Incidentally, we discussed this thing in a very general way and Mr. Ferer and Mr. Clements both in our discussions stated any of these lines we wished to leave in here they were willing to have them remain.

Q. Those were communicating lines between the tanks you were reserving?

A. That is right.

Q. But you did not reserve any of the lines running from any of these particular tanks to any of the wells on the property?

(Testimony of Harold E. Davis.)

Mr. Paradise: I think the map speaks for itself, Mr. Sturzenacker. The map shows in red the particular pipe-lines that were to be excluded in accordance with the provisions of the contract.

Mr. Sturzenacker: Will you stipulate with me, Mr. Paradise, that none of these lines as indicated on the map ran to any of the wells on the property?

A. Pardon me; I might point out this particular line here which appears to be going to some location over in this direction but that was only another line that was generally included in the surrounding tanks.

Q. None of those lines that are in red go to any wells, do they? I mean the lines that are around the tanks, with the exception of the gas line that you referred to a few moments ago.

A. I don't believe they do. [70]

Q. Do you know anything about the condition of the various oil lines that ran from the oil wells to various tanks and from those tanks to these tanks, that were reserved? Do you know anything about the condition of those lines? A. No, sir.

Q. As far as you know, they were in good condition?

A. They might have been.

Q. And they could have been used in the event they were going to produce from any of these particular wells?

Mr. Paradise: I object to that. The witness has stated he doesn't know the condition of the lines.

The Court: Wouldn't that be argumentative in view of his testimony?

Mr. Sturzenacker: I think that is right. I will withdraw the question.

(Testimony of Harold E. Davis.)

Q. Do you have any knowledge of the system used by the previous operators of this field for the purpose of gathering and moving the oil produced from this field?

A. None other than might be indicated by the fact that there were smaller lines on the inside of the large gathering lines.

Q. And that would indicate to you what, Mr. Davis?

A. That they might have been steam lines used to heat the oil.

Q. And those are commonly called gut lines, are they not? [71]

A. I never heard that term before.

Q. They shove live steam through the line for the purpose of heating the oil and making it run, is that right?

A. Yes, sir.

Q. I think it is understood but for the purpose of the record it is your understanding that the oil originally produced from this field is of low gravity?

A. I would assume that.

Q. You never saw any of it or saw it produced?

A. I have seen the oil in those tanks up there but I don't know what gravity it was.

Q. These steam lines were connected with boilers and other equipment on the field that were used for heating steam and running it through the lines?

A. I imagine they would be hooked up to boilers or were at one time.

Q. The boilers were still there, were they not?

A. Some of them were.

Q. And those boilers were included in the sale of merchandise to Mr. Ferer?

A. Yes, sir.

(Testimony of Harold E. Davis.)

Q. You have mentioned certain of these articles that you had previously sold or knew of their disposal and, naturally, you excepted those. From what source, other than the production department, did you get any instructions as to what material you were to exclude from this sale? [72]

A. From the sale to Mr. Ferer?

Q. Yes.

A. We excluded the sale of material that had previously been made to this Mid Coast Oil Company or West Coast, although I think it is Mid Coast.

Q. And you excluded the sale to O. C. Fields that you had made and you excluded the dehydrators which you knew didn't belong to them? A. That is right.

Q. Except from the production department, did you get any instructions from anybody else to exclude anything else in this sale?

A. I believe we asked the refinery department if they wanted any of the material or equipment that they might use on some other facility in some of our other operations.

Q. Did they ask you to exclude any property?

A. Not to my knowledge.

Q. Then, would you state from your knowledge that no department except the refinery department asked you to exclude any of this property?

A. My information came from the production department.

Q. I beg your pardon. I mean from the production department. A. No.

(Testimony of Harold E. Davis.)

Q. And they told you to exclude these tanks and the pipes running from the tanks? [73]

A. That is right.

Q. Who gave you an instruction to exclude the superintendent's house and the cow barn? Do you recall?

A. Mr. Montgomery.

Q. From the production department?

A. That is right.

Q. Did the production department at any time instruct you to exclude from sale pipe in the wells?

A. There was no specific mention made of the casing in the wells.

Q. After discussing with Mr. McGahan—I will withdraw that question. Did you discuss with anybody outside of the Richfield the sale of these salvage goods?

A. I discussed it with Mr. Clements and Mr. Ferer.

Q. I mean besides Mr. Clements.

A. I don't believe so.

Q. Did you receive any bids for any of this equipment or all of it besides the bid from Aaron Ferer?

A. Yes.

Q. Did those—

A. Pardon me; I would like to correct a statement I made. I did discuss the sale of this equipment on the outside with one other person.

Q. Can you tell me who that was?

A. Tom McGeeny of the Union Oil Well Supply Company at Long Beach. [74]

Q. The Union Oil Well Supply Company?

A. I happened to see him on the property at the time I made a survey of it with Mr. McGahan.

(Testimony of Harold E. Davis.)

Q. When you were up there in September?

A. That is right.

Q. Did you receive any other bids from any other person for the purchase of any equipment on the Casmalia lease except Aaron Ferer's bid? A. Yes, sir.

Q. And were those bids directed to you or were they relayed to you by somebody else in the company?

A. I believe they were directed to Mr. Kelly.

Q. And then were they given to you?

A. Yes, sir.

Q. Isn't it a fact that Mr. Ferer's bid was some considerable more money than any other bid offered for the purchase of equipment on the Casmalia lease?

Mr. Paradise: I object to that, if the court please. Does the court feel that bids received by Richfield from other parties in connection with the same sale are material to this inquiry?

The Court: I think the question in its present form is open to criticism. I don't think the foundation has been laid to show the relevancy of going into these other bids.

Mr. Sturzenacker: I will withdraw the question, may it please the court. [75]

Q. How many other bids did you receive?

A. We had a number of different types of bids. Some bids were submitted on buildings only and some on other individual pieces of equipment.

Q. Were there any bids from anybody that read as Mr. Ferer's bid, to cover all tanks, pipes, valves, fittings, and all other materials now situated on your Casmalia refining and producing property, plus the pipe rack adjoining—

(Testimony of Harold E. Davis.)

Mr. Paradise: I object to that on the ground that there is no proper foundation.

Mr. Sturzenacker: I wasn't quite through.

Mr. Paradise: I beg your pardon.

Q. By Mr. Sturzenacker: —adjacent to the railroad track, one-half mile distant, including the boiler and other incidental materials, and excepting those articles set forth in Mr. Ferer's letter of December 10?

Mr. Paradise: I object to that on the ground it is wholly immaterial to the issues in this case and, further, that it is not the best evidence.

The Court: I was going to make this observation. I think it would be pertinent at least to examine these other bids and from such examination determine to what extent, if any, such bids would be admissible. From an examination of the bids, and I assume from what has thus far taken place that the bids were in writing, I think we can best determine whether or not an objection of the character now being [76] offered is well taken or not. Do you wish counsel to produce these other bids so that we might make a preliminary inquiry as to whether or not any of them are admissible in evidence? If so, we would then learn their contents.

Mr. Sturzenacker: Have you those, Mr. Paradise?

Mr. Paradise: May I ask Mr. Davis a question?

The Court: Surely.

Mr. Paradise: Were all of the other bids that you received in writing? A. I believe they were.

Mr. Paradise: I can produce all of those we have, your Honor.

(Testimony of Harold E. Davis.)

Q. By Mr. Sturzenacker: After you received this bid from Mr. Ferer—it came direct to you, did it not?

A. It came to Mr. Kelly and then to me.

Q. With whom did you discuss it, if anybody?

A. I discussed it with Mr. Kelly. Later on—

Q. At Mr. Kelly's request, did you call Mr. Ferer and accept his bid?

The Court: May I interrupt to say that I think the witness was about to add something to the answer to the previous question?

Mr. Sturzenacker: Pardon me.

Q. Had you finished your answer?

A. I was going to say and later on Mr. McGahan.

The Court: Now, will you read the pending question?
[77]

(Question read by reporter.)

A. Yes, sir.

Mr. Sturzenacker: That is all.

Redirect Examination.

Q. By Mr. Paradise: Mr. Davis, I believe you testified that in connection with this sale of tubing and sucker rods and the derricks to Mr. Anderson you had an inventory of the tubing and sucker rods?

A. Yes, sir.

Q. Where did you receive that?

A. From the production department.

Q. Do you know whether that was a recent inventory that had been made at that time?

A. It is my understanding that it was an inventory that had been prepared or a record, rather, that had been prepared of the installations as they were made during the time when the property was operated.

(Testimony of Harold E. Davis.)

Q. That was at what time?

A. I don't understand that question.

Q. Do you mean at the time the property was operated prior to 1926?

A. That is right.

Q. The inventory had been prepared prior to that time? Is that your statement?

A. That is my idea. [78]

Q. What was the condition of the derricks at that time? Do you know?

A. Some of them had fallen down and those remaining erect were in pretty bad shape.

Q. Of what material were they composed?

A. Wood.

Q. I believe you also testified that under that arrangement with Mr. Anderson he was not required to remove all of the tubing and sucker rods from the wells that were covered?

Mr. Sturzenacker: Just a minute. Didn't we agree that we would look at the contract for that and you moved to strike the testimony of this witness because of that contract? Isn't that correct?

Mr. Paradise: That is correct but I was going to inquire about a matter aside from the contract. This is merely preliminary.

Mr. Sturzenacker: All right; no objection.

Q. By Mr. Paradise: What was the purpose in not requiring Mr. Anderson to remove all of the tubing and rods from those wells?

Mr. Sturzenacker: I object to that. It calls for a conclusion of the witness.

(Testimony of Harold E. Davis.)

The Court: The question, I think, perhaps needs to be reframed. Counsel might make the question possibly a little bit more specific so as to bring out any fact within the witness' knowledge as distinguished from his interpretation [79] of the fact.

Q. By Mr. Paradise: Are you familiar with the work that Mr. Anderson was required to do under that contract? A. Yes, sir.

Q. Was he required to pull the tubing from the wells?

A. That which he could recover.

Q. In what manner would he fail to recover tubing from the wells?

A. In the event any of the tubing might have been parted.

Q. Do you know if there was some reason at that time why he was not required to pull all of the tubing from the wells?

The Court: That is, if there was any condition existing?

Mr. Paradise: Yes.

Mr. Krasne: I object to that on the ground it is incompetent, irrelevant and immaterial. This witness testified that he had never gone up to see the property or the condition of the equipment until a time after Mr. Anderson's work had already been completed.

The Court: Obviously, the witness should testify only to those matters within his knowledge.

Q. By Mr. Paradise: Do you know of any reason why Mr. Anderson was not required to remove the tubing from the wells, entirely aside from the condition of the tubing itself?

(Testimony of Harold E. Davis.)

A. It was my understanding that they didn't want to take [80] any chance on hurting the casing in the wells.

Q. How could the casing in the wells be hurt?

Mr. Sturzenacker: Just a minute. I move that answer be stricken as a conclusion of the witness and it is hearsay.

The Court: I rather think the objection is well taken. Did you say that you handled the so-called Anderson deal? A. Yes, sir.

The Court: The witness has been interrogated relative to various aspects of the Anderson deal and that, I think, opens the door to asking him as to what, if anything, was done or said during the negotiations which took place at the time of entering into that transaction relative to whether or not there were any circumstances under which Anderson would not be required to remove all of the tubing.

Mr. Krasne: Certainly, any conversations between Mr. Davis and Mr. Anderson would be hearsay in so far as the plaintiff is concerned. In response to the plaintiff's question, I think this witness has heretofore testified that he wasn't familiar with the equipment and wasn't familiar with that situation but just knew that the sale had been made and that the sale was for all that could be recovered. Certainly, that would not open the door on redirect examination to conversations that would otherwise be hearsay nor would that qualify this man as an expert as to why certain of the pipe wasn't removed and certain pipe was removed.

The Court: I think we must agree that the witness has [81] not been qualified as an expert. He has been asked as to what took place relative to that deal and he

(Testimony of Harold E. Davis.)

has been asked as to whether or not all of the tubing was to be removed, which I think was all elicited on the earlier examination of the witness. Now, it appearing that this was the witness who handled the deal for the defendant, and I am speaking now of the Anderson deal, I think, so far as he has knowledge thereof, he should be allowed to state whether or not as a part of that deal anything was said or done relative to making any distinction between the tubing that could be removed and the tubing that could not be removed.

Mr. Krasne: We object, further, on the ground that it is not the best evidence and the contract will speak for itself when produced by counsel. Certainly, we are not going to let this witness testify to a lot of collateral things and conversations when counsel himself has suggested that the contract should indicate what the deal was.

The Court: It may be necessary to bring this witness back when you produce that contract.

Mr. Paradise: Very well.

Q. What instructions did you receive from the production department, Mr. Davis, with respect to the items of equipment that were to be excluded from this sale? Or, first, let me ask you with whom did you talk in the production department about this?

A. Mr. Montgomery. [82]

Q. And who is Mr. Montgomery?

A. He is the manager of our production department.

Q. When did you have this conversation with him?

A. The first conversation I had with him was, I believe, sometime in September or October of 1940.

(Testimony of Harold E. Davis.)

Q. Was that before or after Mr. Kelly had instructed you to make arrangements for this proposed sale?

A. That was after Mr. Kelly had done that.

Q. Where did these conversations take place? I mean the conversations with Mr. Montgomery.

A. Where did they take place?

Q. Yes. A. In the Richfield Building.

Q. Will you state what was said in those conversations?

Mr. Sturzenacker: We object to it. It is not proper cross-examination and is hearsay.

Mr. Paradise: If the court please, I believe the plaintiff has waived any possible objection that it might have on that ground. On some five or six occasions during his direct examination he inquired of this witness what conversations this witness had with other members of the Richfield organization and also as to what instructions he had, and he also asked if the production department had ever asked him to exclude the casing in the wells. It is perfectly proper for him to explain the entire conversation.

Mr. Sturzenacker: That was on cross-examination; not [83] direct examination.

Mr. Paradise: That is what I meant.

The Court: Doesn't it seem logical, if the witness has been allowed to go into the matter of these conversations which involved the obtaining of these instructions, that the door is open to inquiring as to just what was the nature of those conversations, which is another way of asking what were the instructions? I think the question is pertinent and admissible and the objection is overruled.

(Testimony of Harold E. Davis.)

Mr. Paradise: Will you read the question, Mr. Reporter?

(Question read by reporter.)

The Court: Of course, I think the question will need to be split up instead of going into several conversations in answer to one question.

Q. By Mr. Paradise: I mean to limit this, Mr. Davis, to the first conversation that you had with Mr. Montgomery after receiving your instructions from Mr. Kelly to arrange for the sale of this salvage equipment.

Mr. Krasne: Will you fix the date a little more accurately, Mr. Paradise?

Q. By Mr. Paradise: Can you fix the date?

A. I would still think it was sometime in September or October, possibly the first part of October or late September.

Q. And at that conversation was there anyone present except you and Mr. Montgomery?

A. No. We just merely discussed the fact that this was [84] up for sale before it was submitted.

Q. Did you go to Mr. Montgomery's office?

A. I believe I called him on the phone.

Q. What did you tell Mr. Montgomery?

A. That this equipment, of course, as he knew, was up for sale and asked him—

Q. I can't hear you. I am sorry.

A. That the equipment was up for sale and I asked him to give us an inventory of what items, what surface items, he wanted reserved and not sold off of the property.

(Testimony of Harold E. Davis.)

Q. Did you identify the equipment that you said was up for sale?

A. Of course, my instructions had been to make a survey and make arrangements and obtain the information from the necessary operating heads as to what equipment was to be retained. Let's see; I am confused on that now.

Q. Is that the reason you called Mr. Montgomery?

A. That is right.

Q. In your conversation did you mention Casmalia?

A. Yes.

Q. Did you tell Mr. Montgomery the nature of the equipment which you were contemplating selling?

Mr. Krasne: Let's just ask him for the conversation.

Mr. Paradise: All right.

Q. Will you repeat the conversation fully?

A. I would like to go back a little further on that, [85] Mr. Paradise, and explain to the court that I had received instructions from Mr. Kelly to make arrangements to dispose of all the obsolete and surplus surface equipment located at Casmalia. Part of the duties of disposing of that equipment would be to find out what items were to be retained by the operating department and make a contact with Mr. McGahan who was the representative of our stores department and submit the equipment and facilities for sale. In first contacting Mr. Montgomery, he stated that there were certain tanks and certain lines which were to be excepted.

Q. Is this the conversation which you referred to before?

A. Yes, sir.

(Testimony of Harold E. Davis.)

Q. What did he state?

A. This was not definitely settled then, what all of the lines were going to be, but Mr. Montgomery told me that he would have a sketch made of the water line running from the water tanks down to the superintendent's house and over to the watering trough for the cattle. The other line, of course, was a gas line running from the superintendent's house over to any of the oil wells which might be necessary or which might furnish gas to the superintendent's house.

Mr. Krasne: Will you speak a little louder? We are having difficulty hearing over here.

A. All right. I think that is about all.

Q. By Mr. Paradise: Did he request any other exclusions?

A. Later on, we got definite information as to the [86] numbers of the tanks and the sizes that were to be excluded, those lines, the interconnecting lines, around the tanks and a line off to the Casmite property. I have already mentioned the gas line and the water lines and the superintendent's house, the dehydrators and the cow barn.

Mr. Krasne: If the court please, we would like to move to strike, first, the portion of this witness' voluntary statement about what instructions he had received from Mr. Kelly and what he was supposed to do. Counsel asked him to repeat the conversation he had had with Mr. Montgomery.

The Court: Yes; I am inclined to think it is not responsive to the question. So that part of the answer will go out.

(Testimony of Harold E. Davis.)

Q. By Mr. Paradise: In this conversation with Mr. Montgomery, did Mr. Montgomery mention any reason why he wanted any of these items excluded?

Mr. Sturzenacker: Just a minute. I object to that as leading and suggestive.

The Court: No; I don't think it is leading and suggestive.

A. In the telephone conversation I had with Mr. Montgomery, at the time that Mr. Ferer and Mr. Clements were present in my office,—

Q. By Mr. Paradise: Pardon me. Is this the same conversation as to which you have already testified or another one?

A. Naturally, I had a number of conversations and this [87] is another conversation.

Q. Confine yourself to the first conversation with respect to which you have already testified.

A. Well, I don't recall whether he specified why he wanted those specific items excepted or not.

Q. I believe you testified you had another telephone conversation with Mr. Montgomery on December 8th, when Mr. Clements and Mr. Ferer were present in your office, is that correct? A. January 8th?

Q. Yes; is that correct? A. That is right.

Q. Did you put in the call to Mr. Montgomery in the presence of Mr. Ferer and Mr. Clements?

A. Yes, sir.

(Testimony of Harold E. Davis.)

Q. What prompted that conversation? What occurred prior to that time which caused you to phone Mr. Montgomery?

A. We were discussing the tanks that we were to except and the lines around the tanks and Mr. Clements, I believe it was, asked me why we didn't sell the tanks. He was very anxious to obtain those as well as some of the other equipment.

Q. Are you talking now about the six large tanks that are listed in the contract in paragraph 1, starting with a 55,000 barrel tank?

A. That is right; those are the six tanks that were [88] excepted.

Q. And what did he state?

A. Mr. Clements wanted to know why we wouldn't sell those tanks. And so I called Mr. Montgomery on the telephone and asked him why those tanks were not included in the sale and he said he wanted to retain them in the event that the wells were ever opened up for production; that those tanks would be used as storage.

Q. Did you repeat any part of that conversation to Mr. Clements and Mr. Ferer?

A. I repeated the conversation to them as soon as I hung up.

Q. What did you tell Mr. Ferer and Mr. Clements?

A. I told them that the tanks were not to be sold because the production department wanted to retain them for storage purposes in the event the wells were re-opened.

The Court: We will take a recess until tomorrow morning at 10:00 o'clock.

(Testimony of Harold E. Davis.)

(Whereupon an adjournment was taken until 10:00 o'clock, A. M. the following day, Friday, September 4, 1942.) [89]

Los Angeles, California, Friday, September 4, 1942;
10:45 A. M.

(Appearances as last noted.)

(Case called.)

Mr. Krasne: Ready.

Mr. Paradise: Ready.

H. E. DAVIS, recalled.

Redirect Examination, resumed.

Mr. Paradise: If the court please, before proceeding with the examination of Mr. Davis, I want to state that, in view of Mr. Krasne's statement to the court yesterday concerning the fact that it was his belief that all that were to be tried were the issues of reformation, I believe the record should be clear that all of the affidavits and depositions which have been admitted in evidence under the court's order, I believe it was, of July 1, as well as the oral testimony that is now being taken, are offered not only under the issues raised by the counterclaim and the reply, that is to say, the two causes of action in the counterclaim and the plaintiff's reply, but also under the issues raised by the plaintiff's complaint and the defendant's answer and that that was my understanding of the court's order.

Mr. Krasne: The order that now stands, I believe, is [90] that the depositions of Mr. Ferer and Mr. Clements are now in evidence, I presume, for all issues, of course, subject to our right of cross-examination and motions and objections and so forth. And I believe the

(Testimony of Harold E. Davis.)

court's indication yesterday was that all of the affidavits which have been filed by the defendant as well as the deposition of Mr. Zeidenfeld are not now to be included in evidence and that I was to be relieved of my stipulation with respect thereto, and that is why we are now taking the testimony of Mr. Davis and are about to take the testimony of Mr. Zeidenfeld. Am I correct, your Honor?

The Court: What other affidavits are there?

Mr. Paradise: The affidavits of Mr. H. H. Kelly and Mr. McGahan.

The Court: Did we inquire as to the availability of those men?

Mr. Paradise: I don't believe we did, if the court please, but I understand that both gentlemen are in court. I doubt if they are subject to draft.

The Court: I think we ascertained the age of at least Mr. Montgomery. I am not sure whether we inquired as to the other gentlemen or not. Mr. Kelly, what is your age?

Mr. Kelly: 51.

The Court: And are you married?

Mr. Kelly: Yes, sir.

The Court: And Mr. McGahan? [91]

Mr. McGahan: 45.

The Court: And are you married?

Mr. McGahan: Yes, sir.

Mr. Paradise: It was my understanding, if the court please, that the chief motive that prompted both the stipulation of counsel and the order of court in the introduction of both the affidavits and the depositions, the vari-

(Testimony of Harold E. Davis.)

ous depositions, was to expedite the matter in order that the matter might be properly disposed of and not spend so much time before the court in producing testimony. I think it is important that that purpose be adhered to at this time in view of the war situation and in view of the fact that this corporation is engaged largely in the war effort and I dislike to take their time from that purpose.

The Court: I gathered that our procedure with reference to the other affiants would be no different than that with reference to Mr. Davis. I don't know why we should make any distinction. Do you see any logical reason for making any distinction between the interrogation of the witness now on the stand and that of the other two affiants?

Mr. Krasne: Well, I just didn't want the record to have their affidavits of record. I don't see how much time is going to be saved. I don't know why I should stipulate a record for the other side. The affidavits are not that long. We have stipulated with respect to the lengthy depositions of our people, of the plaintiff's witnesses. I don't know [92] why the defendant should be permitted to try its case by affidavits. The people will be available. For instance, I don't know how much time will be saved by reason of the fact that an affidavit of Mr. Davis has been permitted to go in the record.

The Court: It was always understood that you would have the time that you did consume on cross-examination. There never was any doubt about that. But we have saved the time of the direct examination.

Mr. Krasne: I, naturally, will abide by the court's ruling. I just don't want to be deemed to have stipulated

(Testimony of Harold E. Davis.)

it and will ask to be relieved of my stipulation because of my understanding but, naturally, I will abide by the court's ruling.

The Court: I think the same procedure should be followed as to the other two affiants. Of course, that may mean that we will not reach the testimony of Mr. Zeidenfeld. I think we will have to keep in mind that, if we can't take his testimony, in the event of his inability to appear, his deposition will become available.

Mr. Krasne: Our understanding was we would finish with Mr. Davis, and Mr. Zeidenfeld is here, and that we would put him on the stand. That was our understanding yesterday.

The Court: Apparently it wasn't made clear, at least in my mind, that you were making any distinction between the witness now on the stand and any other person whose affidavit [93] has been filed. I don't see why we should make any distinction.

Mr. Krasne: I think I have been too argumentative, which I don't mean to be, but the reason yesterday was that there was some danger of this particular witness not being available. And we decided at this stage to do three things, first, to take his testimony. Then Mr. Zeidenfeld was available for the other side if they wanted to interrogate him, and he was to come on this morning. And they had some reason to take Mr. Montgomery's testimony.

The Court: Don't you see this risk? On the one hand, the deposition of Mr. Zeidenfeld has been taken and there has been some cross-examination of him during the course of that deposition. You haven't had the opportunity to cross-examine either Mr. Kelly or Mr. Mc-

(Testimony of Harold E. Davis.)

Gahan. In the event that these men are unable to appear at the trial, you may find yourself handicapped through failure to cross-examine them now but you have had the benefit at least of some measure of cross-examination of Mr. Zeidenfeld. So I think the order in which witnesses should be interrogated should be that, after Mr. Davis has concluded, then either Mr. Kelly or Mr. McGahan may be cross-examined.

Mr. Paradise: Would the court prefer that rather than to hear the testimony of Mr. Montgomery? Would the court prefer to postpone that? I was going to suggest to the court, upon the conclusion of Mr. Davis' testimony, that, because [94] Mr. Montgomery is engaged in some collective bargaining negotiations, he has arranged to be here this morning and for a part of this afternoon.

The Court: I think something was said about the fact that Mr. Montgomery might be required to be somewhere else.

Mr. Krasne: Yes. But, in view of your Honor's observation, which I think might have some benefit to us at the moment, there are no affidavits of Mr. Montgomery on file and I think the defendant can take its own chances as to whether they make his evidence available to the court. But, if we are to proceed with other witnesses than Mr. Zeidenfeld, I think we should avail ourselves of the opportunity to take Mr. Kelly's testimony, who has an affidavit on file, and cross-examine him, and the same with Mr. McGahan, and defer Mr. Montgomery.

Mr. Paradise: I really object to that procedure, if the court please. It is my understanding that the plaintiff must prove its case on its own complaint and we are be-

(Testimony of Harold E. Davis.)

ing forced to put our case on out of order, and I would like to put on the witnesses in the order in which they should appear.

The Court: That would create a problem. We may find ourselves occupied with the testimony of certain witnesses and yet not have the time presently to afford cross-examination of Mr. Kelly and Mr. McGahan. I don't think that the plaintiff ought to be put to that risk as long as you are going to have the benefit of their affidavits as evidence in [95] chief.

Mr. Paradise: Could the court indicate how much time we will have for the presentation of this matter, **that** is to say, will today's session conclude the matter?

The Court: I hope so.

Mr. Paradise: I mean to say, if the matter is not completed at the end of today's session, will the court permit more time at this time?

The Court: It looks like we will have to at least go far enough to permit the witnesses who are in the courtroom to conclude their testimony.

Mr. Paradise: That is to say, we can go on next week, is that correct?

The Court: Yes. But I am not certain about the date. I know it will not be Monday because that is a legal holiday and it will not be Tuesday because our law and motion calendar will be called Tuesday instead of Monday. It may be Wednesday.

Q. By Mr. Paradise: Mr. Davis, what instructions did you receive from Mr. Kelly at the time of the commencement of this transaction?

(Testimony of Harold E. Davis.)

A. He instructed me that the management desired to dispose of certain surface equipment facilities at the Cas-malia property and to contact the interested parties to find out what, if any, of that surface equipment was to be retained on the property.

Q. What is surface equipment, Mr. Davis? [96]

Mr. Sturzenacker: We object to that as calling for a conclusion of the witness.

The Court: Are you agreed as to what it means? If not, someone versed in this type of enterprise ought to be allowed to tell us.

Mr. Krasne: I think for the purpose of the record, so we won't have to interrupt constantly, we should like to interpose an objection to any such questions, this question and all similar questions, on the ground that they are incompetent, irrelevant and immaterial, it being parol evidence and tending to vary the terms of a written contract that does not contain the words "surface equipment," any such or similar words.

The Court: I think there may be some confusion here. This witness was interrogated about his conversations with his superior Mr. Kelly, which involved instructions preparatory to negotiating the sale which was ultimately made to the plaintiff. Now he is being asked to explain the particular term that he claims was used in fact in one of the conversations with the plaintiff's representatives. I don't think we are here concerned with the parol evidence rule. The objection is overruled. Is there any claim that this witness is not qualified to answer, in other words, that the foundation has not been laid to show that he knows what he is talking about and the meaning of the term "surface equipment"?

(Testimony of Harold E. Davis.)

Mr. Sturzenacker: Only, your Honor, his own remark on [97] cross-examination that he wasn't acquainted with the field and knew nothing about it; that he was a buyer of equipment and that was all. He has not been qualified as any kind of an expert to determine what surface equipment might consist of.

The Court: Do you want to lay the foundation by this witness or some other witness?

Mr. Paradise: I will do both, if the court please, because I would like to have the court have the benefit of this witness' understanding of the term.

Q. I believe you have testified that your duties as a buyer in the purchasing department also included the sale and disposal of salvage equipment, is that correct?

A. That is correct.

Q. In connection with transactions for the sale and disposal of salvage equipment, have you on occasion used the words "surface equipment"? A. Yes.

Q. On how many occasions would you say?

A. Oh, numerous times. Surface equipment is referred to—

Q. Before you answer that, is surface equipment a common and ordinary phrase in the oil industry?

A. Yes; it is.

Q. Do you know what it means?

A. It pertains generally to equipment and facilities [98] located on top of the ground and, to go further, pipelines, some of which might be buried a small amount underground.

Q. Are pipelines considered surface equipment in the oil industry? A. Yes; they are.

(Testimony of Harold E. Davis.)

Q. In the general use of that phrase?

A. Yes; they are.

Q. From what other types of equipment do you distinguish surface equipment, that is, from what other types of equipment in an oil field do you distinguish surface equipment?

A. May I have that question again, please?

Q. I will reframe the question. Perhaps it wasn't clear. Are there other types of equipment in an oil field which are not surface equipment? A. Yes.

Q. What are they?

A. There is subsurface equipment.

Q. Can you give us any illustrations of subsurface equipment?

A. Casing in the well, tubing, sucker rods and deep well pumps.

Q. What is the common and ordinary meaning in the oil well industry of subsurface equipment?

A. Equipment that is installed in a well more, I suppose you would say, in a vertical position in the ground.

Q. When you say installed, you mean installed in what [99] manner?

A. By running it in the hole.

Q. Does it make any difference whether the equipment which has been run into the hole has been cemented in place or fixed in any other manner?

A. Generally speaking, casing is cemented in the well.

Q. After you received your instructions from Mr. Kelly, did you have any discussions with Mr. Montgomery? A. Yes.

(Testimony of Harold E. Davis.)

Q. What was that discussion? Or, first, will you state when that occurred in relation to the day when you received your instructions from Mr. Kelly?

A. I think about the first time I talked to Mr. Montgomery was the latter part of September or the first part of October.

Q. Was that the telephone conversation to which you testified yesterday? A. Yes, sir.

Q. What did you tell Mr. Montgomery?

A. That we were making arrangements to dispose of certain surface equipment at Casmalia and asked him what exceptions there were or what items of equipment he wished to retain on the property.

Q. And Mr. Montgomery's reply was what?

A. Well, among—I will change that. There were six tanks that he wished to retain and a gas line to supply the [100] superintendent's house with fuel and a water line and the water tanks and water pump.

Q. Was there anything else that occurred at that conversation?

A. There were to be interconnecting lines which were also to be retained around the tanks.

Q. Was that the complete substance of the conversation or was there anything further?

A. It is my understanding at that time that the tanks were to be retained.

Q. Not as to your understanding, Mr. Davis, but merely as to what was said between you and Mr. Montgomery.

(Testimony of Harold E. Davis.)

A. At that time Mr. Montgomery told me that he wished the tanks retained in order that they would be available in the event the wells were ever reopened for production.

Mr. Krasne: When was this conversation?

Mr. Sturzenacker: May I have that answer, Mr. Reporter?

(Answer read by reporter.)

Q. By Mr. Paradise: Perhaps my question wasn't clear. I am still referring to this telephone conversation that took place rather than the subsequent conversation with Mr. Montgomery to which you testified yesterday.

A. Well, the conversation that you refer to, I presume, is the January 8th conversation.

Q. No. I was talking about your first conversation with Mr. Montgomery after you received your instructions from [101] Mr. Kelly. I will restate that. In your first conversation with Mr. Montgomery, did Mr. Montgomery state the reason why he wanted the tanks reserved or excluded from the sale?

A. I believe he did because it was always my understanding from the time that we first started—or it was my understanding after I had talked to him that that was the reason why they were being retained.

Mr. Krasne: We move that the last portion of the answer be stricken as not responsive.

The Court: The part about his understanding will go out beginning with the word "because".

(Testimony of Harold E. Davis.)

Q. By Mr. Paradise: I believe you testified yesterday that you had a subsequent discussion with Mr. Montgomery that occurred on January 8th, is that correct?

A. That is correct.

Q. As to which you have already testified.

At the court's request, I have produced the contract, dated March 12, 1940, between Richfield Oil Corporation and W. R. Anderson, doing business under the name of Petroleum Service Company.

The Court: Counsel have seen it, have they?

Mr. Paradise: Yes. May it be stipulated that this be offered in evidence?

Mr. Sturzenacker: So stipulated.

Mr. Paradise: I so offer this, your Honor, I believe it is Defendant's Exhibit No. 2. [102]

The Clerk: Do you wish them lettered?

The Court: Lettered; yes. The clerk calls attention to the fact that in one of the depositions there is a defendant's exhibit marked 1. That will have to be changed. To what deposition is that attached?

Mr. Paradise: That is the deposition of Mr. Zeidenfeld.

The Court: As long as the number is to be changed, we might just as well call this contract now Defendant's Exhibit A.

[DEFENDANT'S EXHIBIT NO. A.]

This Agreement, made and entered into this 12th day of March, 1940, by and between Richfield Oil Corporation, a Delaware corporation, hereinafter called "Richfield," having an office and place of business at 555 South Flower Street, Los Angeles, California, and W. R. Anderson, doing business under the firm name and style of Petroleum Service Company, hereinafter called "Contractor", having an office and place of business at Santa Maria, California,

Witnesseth:

That, Whereas, Richfield desires to engage the services of the Contractor to perform certain work upon the oil wells located on that certain parcel of real property in Santa Barbara County, California, more particularly described as follows:

Sections 18 and 19, Township 9 North, Range 34 West, S. B. B. & M.,

and to remove certain equipment hereinafter described therefrom and to clean up the premises and restore the same to their original condition all in the manner and subject to the terms and conditions hereinafter set forth,

Now, Therefore, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto covenant and agree as follows:

1. Contractor shall furnish, supply and install, at Contractor's sole cost and expense, all labor, machinery, equipment, materials and supplies, including fuel, water and electricity necessary for the performance of Contractor's work and services hereunder.

(Defendant's Exhibit No. A)

2. All materials, equipment and appliances to be furnished, supplied, and installed by Contractor under the provisions of paragraph 1 hereinabove shall be subject to inspection and acceptance by the representative designated by Richfield and in the event of the rejection thereof or any portion thereof by said representative because of inadequacy or defectiveness, Contractor shall immediately and at its own cost and expense replace the same, which replacement shall be subject to the inspection and acceptance of Richfield's representative.

3. Contractor covenants and agrees that within five (5) days from date that notice is received from Richfield to start its operations, Contractor shall proceed diligently with the performance of the work in accordance with the provisions of this agreement. Contractor further covenants and agrees that all of said work shall be completed not later than ninety (90) days following the date of receipt of said notice.

4. Contractor agrees to perform the following work hereunder, which work is hereby defined to include generally the dismantling, removal, and disposition of all the wooden derricks located upon the land above described whether or not now standing; the cleaning out of all cellars, pits, and sumps, the filling of the same with dirt, and the leveling of the same to the natural surface of the contiguous land; the pulling of pumps, rods, and tubing from all the wells in which such equipment is present; the replacing of top flanges on all tubing heads; the plugging or capping of all tubing head outlets, excepting only one outlet on each well, which said outlet on each well shall be fitted by Contractor with valves in good condition; the removal from the premises of all pumps, rods and tubing

(Defendant's Exhibit No. A)

and all junk and debris found in the vicinity of the well sites; and any and all acts and steps necessary or proper to accomplish the foregoing, all in accordance with good oil field practice and as designated by Richfield. All of said work shall be performed by Contractor to the satisfaction of Richfield and in accordance with the requirements of the County of Santa Barbara, State of California and of the Division of Oil and Gas of the State of California and of any other governmental authorities, and including, but without limiting the generality of the foregoing, the Fire Warden and the Fish and Game Commission. Without in any manner limiting the generality of the foregoing, Contractor shall perform the following specific work:

(a) Contractor shall dismantle and burn or otherwise remove from the premises all of the thirty-five (35) wooden derricks and foundations and appurtenances thereto, whether or not now standing, located upon the parcels of real property above described.

(b) Contractor shall clean out all the cellars, pits, and sumps at or near said thirty-five (35) wells and shall remove from said land above described and dispose of all oil, tar, waste mud, together with any other debris cleaned out of said cellars, pits, and sumps.

(c) Contractor shall fill up all the cellars, pits, and sumps with good dirt, and shall level off the fills to conform to the natural or graded surface of the contiguous land.

(d) Contractor shall pull from the following thirty-one (31) wells the pumps, rods and tubing listed in the following schedule:

(Defendant's Exhibit No. A)

Well No.	Tubing		Rods	Pump
		— approx.	960' $\frac{7}{8}$ " x approx.	4" x 7' 950'
1	4- $\frac{3}{4}$ "	lapweld casing	1100' $\frac{7}{8}$ " x	4- $\frac{3}{4}$ " x 5' Axelson
2	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
3	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
4	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
5	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
6	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' D & B
7	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
9	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' Axelson
10	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' D & B
11	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
12	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
14	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
15	3"	lapweld plain	" " " "	" 3" x 7' "
22	3"	lapweld plain	" " " "	" 3" x 7' "
23	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
29	3"	lapweld plain	" " " "	" 3" x 7' "
30	3"	lapweld plain	" " " "	" 3" x 7' "
31	3"	lapweld plain	" " " "	" 3" x 7' "
32	3"	lapweld plain	" " " "	" 3" x 7' Axelson
36	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' D & B
37	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
38	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' "
39	4"	lapweld plain	" " " "	" 4" x 7' Axelson
40	5"	lapweld casing	" " " "	" 4" x 7' D & B
41	4"	lapweld plain	" " " "	" 4" x 7' Axelson
42	3"	lapweld plain	" " " "	" 3" x 7' D & B
44	3"	lapweld plain	" " " "	" 3" x 7' Axelson
47	3"	lapweld plain	" " " "	" 3" x 7' "
47	4"	lapweld plain	" " " "	" 4" x 7' "
50	4- $\frac{3}{4}$ "	lapweld casing	" " " "	" 4- $\frac{3}{4}$ " x 7' D & B
51	4- $\frac{1}{2}$ "	lapweld casing	" " " "	" 4- $\frac{1}{2}$ " x 7' "

(Defendant's Exhibit No. A)

Contractor shall remove from said land above described all pumps, rods and tubing so pulled from said wells as aforesaid; provided, however, that Contractor shall not pull from any of said wells or remove from said land any of said pumps, rods or tubing until after Contractor shall have completed all the work provided for in subparagraph (a) hereinabove; and provided further that Contractor shall store upon said land one-half ($\frac{1}{2}$) of the tubing so pulled from each of said wells until Contractor has completed the performance of all of its duties, liabilities and obligations under this agreement; and provided further that Contractor shall not remove from said land such tubing so stored upon said land until payment by Contractor to Richfield of the purchase price therefor as provided in paragraph 15 hereinafter.

Contractor agrees that the work provided to be performed by him under the provisions of subparagraphs (b) and (c) hereinabove shall be performed by him on a well by well basis concurrently with the work to be performed by him under this subparagraph (d).

Contractor shall not remove from any wells any of the casing or liners now installed therein other than said tubing, rods and pumps above described.

(e) It is expressly understood and agreed that in connection with the work described under subparagraph (d) hereinabove Contractor shall not be required to engage in "fishing" for any of the pumps, rods and tubing in said wells which, prior to the com-

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mencement by Contractor of such work, shall be stuck, frozen, parted or collapsed in the respective wells; provided, however, that in the event that any of said pumps, rods or tubing shall become stuck, frozen, parted or collapsed as a result of the performance of any of Contractor's work, Contractor shall, at its own cost and expense, perform any "fish-ing" operations necessary to remove the same. In the event that Contractor shall discover that any pumps, rods or tubing shall be stuck, frozen, parted or collapsed, as aforesaid, Contractor shall immediately report the same in writing to Richfield's representative.

(f) After Contractor shall have pulled the pumps, rods and tubing strings from said wells as provided in subparagraph (d), Contractor shall replace and securely attach the top flanges on the respective tubing heads of each of said wells and shall also attach a two (2) inch or larger gate valve in good condition to one tubing head outlet on each of said wells, and plug or cap securely all other tubing head outlets on each of said wells all in the manner designated by Richfield's representative.

(g) Contractor shall remove from the land above described any and all miscellaneous equipment of the nature of rig irons, sand reels, wire lines and similar equipment and any and all junk and debris located in the vicinity of any of said well locations.

(h) Contractor shall not move, damage, disturb or remove from the land any pipe lines, tanks, boilers,

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refinery equipment or any appurtenances thereto located upon said land above described.

(i) Contractor shall furnish to Richfield daily during the term hereof a written report specifying in detail and in the manner designated by Richfield's representative all work performed by Contractor under the provisions of this agreement, including a schedule of any and all materials removed from each well under the provisions of subparagraph (d) hereinabove and a schedule of all other equipment removed from the land under the provisions of subparagraph (g) hereinabove, which schedules shall describe in detail the nature, size and length of each item thereof.

(j) Upon completion of said work as above described Contractor shall remove from said land all of Contractor's tools, machinery, equipment and employees and shall leave the premises in a satisfactory, clean and uninjured condition.

5. Contractor shall notify Richfield's representative in advance to witness:

- (a) The burning of any wood or debris;
- (b) The capping of all tubing heads;
- (c) The cleaning out of all cellars, pits, and sumps, and the final condition of the same after filling, leveling and cleaning up;
- (d) All tubing, rods, pumps and equipment prior

(Defendant's Exhibit No. A)

to their removal from the land above described under the provisions of subparagraphs (d) and (g) of paragraph 4 hereinabove.

6. Contractor agrees to protect the said land above described and all improvements and other equipment located thereon, and Richfield Oil Corporation against any and all claims of Contractor, laborers, mechanics and material men, and against all charges, liens and encumbrances of every kind and character arising out of or in connection with the performance by Contractor of any of Contractor's work or services hereunder, and to indemnify Richfield and its successors and assigns of and from any and all loss, cost, damage or expense arising out of or in connection with any such charge, lien or encumbrance.

7. Contractor covenants and agrees to indemnify and hold Richfield and its successors and assigns harmless of and free from any and all claims, liabilities, obligations, and causes of action of every kind and nature whatsoever for injury to or death of persons, including Richfield's employees, and/or damage to or destruction of property, including Richfield's property and property owned by any other persons, firms or corporations, arising out of or in connection with or resulting from any and all acts or omissions of Contractor or Contractor's employees in connection with the performance by Contractor of any of the work or services hereinabove provided for.

8. Contractor covenants and agrees further to place

(Defendant's Exhibit No. A)

in effect immediately and to maintain in effect at all times during the term hereof, at Contractor's sole cost and expense, the following insurance with responsible insurance carriers:

(a) Workmen's Compensation insurance covering all persons employed by Contractor in connection with the work and services to be performed under the provisions of this agreement;

(b) Public Liability insurance in amounts of not less than \$25,000.00 for injury to or death of one person and \$50,000.00 for injury to or death of more than one person in any one accident;

(c) Property Damage insurance in the stated amount of \$25,000.00 for any one accident;

(d) Automotive Public Liability insurance in amounts of not less than \$25,000.00 for injury to or death of one person and \$50,000.00 for injury to or death of more than one person in any one accident; and

(e) Automotive Property Damage insurance in the stated amount of \$5,000.00.

Such policies shall be written by insurance companies satisfactory to Richfield. Certificates issued by said insurance companies issuing said insurance policies shall be deposited with Richfield, which certificates shall provide that ten (10) days written notice shall be given to Richfield prior to any cancellation of or material change in any such policy.

(Defendant's Exhibit No. A)

9. Contractor agrees to indemnify Richfield and hold Richfield harmless from any and all loss, cost, damage, expense, liabilities, and cause of action arising in any manner out of or in connection with any suit, action or proceeding founded upon any claim that any equipment or machinery furnished or used by Contractor in the performance of the work hereunder infringes any patent or patent rights, either foreign or domestic.

10. Contractor, in performing the covenants and agreements of this agreement, shall act solely as an independent contractor and not as the servant or agent of Richfield in any respect, or for any purpose whatsoever.

11. This agreement shall be personal to the Contractor and shall not be assigned by said Contractor, either voluntarily or involuntarily by operation of law without first securing the written approval thereto by Richfield.

12. Contractor agrees that all of Contractor's employees engaged in the performance of work covered by this contract shall be paid wages not less than the wages currently paid by Richfield to similar classifications of labor, and Contractor agrees further that Contractor shall not require or permit any such employees to work longer hours than the hourly scale allowed by Richfield for similar classes of labor employed by Richfield.

13. Contractor agrees to and does hereby accept full and exclusive liability for the payment of any and all taxes and contributions levied or assessed against Rich-

(Defendant's Exhibit No. A)

field or Contractor for unemployment insurance and for old age retirement benefits, pensions, and annuities imposed by the government of the United States and by the government of any state of the United States which are measured by the wages, salaries, or other remuneration paid to persons employed by Contractor in connection with work Contractor is required to perform and have performed under the terms of this agreement.

14. Contractor hereby covenants and agrees to waive, and does hereby waive, any right to lien for services or labor, materials, supplies, equipment, apparatus, or other property performed or furnished under the provisions of this agreement to which Contractor might otherwise be entitled under the provisions of Title 4 of the California Code of Civil Procedure, or otherwise, and Contractor covenants and agrees further to require or secure from any subcontractor performing any portion of said work, the waiver of any such right to lien which might otherwise accrue to such subcontractor.

15. Upon completion by Contractor, strictly in the manner hereinabove provided, of all of Contractor's duties, liabilities and obligations hereunder, Richfield shall execute and deliver to Contractor a Bill of Sale covering all rods, pumps, tubing and other equipment permitted to be removed by Contractor from said real property under the provisions of paragraph 4 hereinabove. An inventory of such equipment prepared from the daily written reports submitted by Contractor under the provisions

(Defendant's Exhibit No. A)

of said paragraph 4 shall be attached as an exhibit to said Bill of Sale. It is expressly understood and agreed that Richfield makes no warranties whatsoever, either express or implied, with respect to the condition or fitness of any of said rods, pumps, tubing or other equipment nor does Richfield make any warranties whatsoever, either express or implied, that the rods, pumps or tubing listed in the schedule provided in subparagraph (d) of paragraph 4 are either now located or present in said wells or that the same are in condition to be removed therefrom by Contractor.

It is expressly understood and agreed that Contractor shall not be entitled to receive payment from Richfield for the performance of any of Contractor's services hereunder and that the execution and delivery by Richfield of said Bill of Sale, as aforesaid, shall constitute full compensation to Contractor for its services. Contractor expressly covenants and agrees to pay to Richfield, concurrently with the delivery of said Bill of Sale, a sum of money equal to 2¢ per foot for all tubing (including casing used as tubing) removed by Contractor from said real property under the provisions of paragraph 4 hereinabove. In addition Contractor shall pay to Richfield the amount of any and all taxes levied or assessed by any Governmental authority in connection with the sale or removal of said rods, pumps, tubing and equipment as above provided, expressly including, but without limiting the generality of the foregoing, the amount of the California Retail Sales Tax applicable thereto; provided,

(Defendant's Exhibit No. A)

however, that in the event that Contractor shall purchase the same for resale Contractor shall execute and deliver to Richfield a certificate of resale in the form prescribed by the California Retail Sales Tax Act and by the Regulations applicable thereto.

16. In the event that Contractor shall be judicially declared bankrupt or insolvent or file a voluntary petition in bankruptcy, or make an assignment for benefit of its creditors, or in the event that Contractor shall at any time refuse or neglect to supply a sufficient number of properly skilled workmen, except in case of strikes or lockouts, or in the event that Contractor shall commit breach or default of any of its duties, liabilities or obligations hereunder and failure to cure or remedy such breach within forty-eight (48) hours after written notice thereof by Richfield to Contractor, Richfield, at its option, but without any obligations so to do, may terminate Contractor's employment, and all costs and expenses incurred by Richfield in completing said work and any and all damages which Richfield shall suffer as a result of any such event or breach or default shall be paid by Contractor to Richfield upon demand therefor. In the event of any such termination of this agreement Contractor shall not be entitled to receive a Bill of Sale from Richfield covering said rods, pumps, tubing and other equipment as provided in paragraph 15 hereinabove, and Contractor shall redeliver to Richfield on said land described hereinabove any and all rods, pumps, tubing and other equipment

(Defendant's Exhibit No. A)

theretofore removed from said real property by Contractor.

17. Neither party hereto shall be liable for any delay due to, occasioned or caused by ordinary wear, fire, earthquake, explosion, flood, hurricane, the elements, act of God or of the public enemy, action of Governmental authorities or agents, war, invasion, insurrection, riots, strikes or lockouts, or any other cause, whether similar or dissimilar to the foregoing, beyond the control of such party, and any delay due to said causes, or any of them, shall not be deemed a breach of or a failure to perform this agreement.

18. Subject to the provisions of paragraph 11 hereinabove, this agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION

By H. H. Kelly

Attest

W. R. Anderson

W. R. ANDERSON,

doing business under the firm
name and style of PETROLEUM
SERVICE COMPANY

[Stamped]: Deft's Ex. No. A. Filed 9/4/42.

(Testimony of Harold E. Davis.)

Q. By Mr. Paradise: Showing you Defendant's Exhibit A, Mr. Davis, are you familiar with this contract?

A. Yes, sir.

Q. Paragraph 4 of this contract provides, in part, as follows: "Contractor agrees to perform the following work hereunder," and then omissions; "the pulling of pumps, rods, and tubing, from all the wells in which such equipment is present; the replacing of top flanges on all tubing heads." And paragraph 4(d) of the contract provides as follows: "Contractor shall not remove from any wells any of the casing or liners now installed therein other than said tubing, rods and pumps above described." Would you state to the court the difference between casing or liners on the one hand and tubing, rods and pumps on the other? A. Tubing is—

Q. Do you know the difference, Mr. Davis?

A. Yes, sir. Casing is ordinarily cemented in a hole [103] and referred to at times as the protective string. Tubing is generally used to produce the well through the tubing, that is, to bring the oil up through the tubing.

Q. Mr. Davis, I call your attention to paragraph 4(e) of this contract and ask that you read the same. Will you read it aloud?

A. "It is expressly understood and agreed that in connection with the work described under sub-paragraph (d) hereinabove, contractor shall not be required to engage in 'fishing' for any of the pumps, rods and tubing in said wells which, prior to the commencement by contractor of such work, shall be stuck, frozen, parted or collapsed in the respective wells; provided, however, that in the event that any of said pumps, rods or tubing shall

(Testimony of Harold E. Davis.)

become stuck, frozen, parted or collapsed as a result of the performance of any of contractor's work, contractor shall, at its own cost and expense, perform any 'fishing' operations necessary to remove the same. In the event that contractor shall discover that any pumps, rods or tubing shall be stuck, frozen, parted or collapsed, as aforesaid, contractor shall immediately report the same in writing to Richfield's representative."

Q. Did you conduct the negotiations for the execution of this contract? A. Yes, sir.

Q. Did you get instructions from any of the departments of the Richfield Oil Corporation for the making of such [104] contract? A. Yes, sir.

Q. From which department did your instructions come? A. The production department.

Q. Did the production department instruct you concerning the inclusion in the contract of the paragraph you just read? A. Yes, sir.

Q. Will you call attention in the contract to what provision you had in mind when you testified yesterday that the contractor was not required to pull all of the tubing from the wells on the property?

A. That portion of the contract which states, "It is expressly understood and agreed that in connection with the work described under sub-paragraph (d) hereinabove, contractor shall not be required—"

Q. Is that the one you just read?

A. Yes; that is right.

Q. Is there any other provision of the contract to which you had reference? A. Not that I know of.

(Testimony of Harold E. Davis.)

Q. Calling your attention, Mr. Davis, to Plaintiff's Exhibit No. 4, which is the contract between Richfield and Aaron Ferer & Sons, and to the map attached thereto as Exhibit A, will you point out to the court on this map any gas lines extending from the other gas line to which reference was made by the legend on the map, which reads, "And any [105] extensions of gas line necessary to furnish gas to Duncan's house"?

A. On this map you will note that this line is a 2-inch gas line.

Q. Are you referring now to the line in red that leads up to Well No. 36?

A. Well No. 36. This line also extends on in this direction.

The Court: That is, to the lower end of the map?

A. That is right.

Q. By Mr. Paradise: That is in an easterly direction, is it not?

A. In an easterly direction and then runs north to Well No. 44 and it is indicated on this map that there is a connection there.

Mr. Krasne: For the purpose of the record, the line that the witness is now indicating is in red, is that correct?

A. That is right. We stopped here and put in this stipulation or this provision, rather.

Q. By Mr. Paradise: Which provision?

A. That states, "And any extensions of gas line necessary to furnish gas to Duncan's house."

(Testimony of Harold E. Davis.)

Q. Does the same line extend beyond?

A. This line extends on beyond Well No. 44 and apparently is split up in two lines and it goes on to Well No. 46. This is the same 2-inch gas line extending on here [106] and from there it goes up to a boiler house apparently.

Mr. Paradise: That is all.

Recross-Examination.

Q. By Mr. Sturzenacker: Mr. Davis, when did Mr. Montgomery tell you or anybody tell you to exclude these gas lines or this gas line running to Mr. Duncan's house?

A. He first told me in our conversation which occurred sometime during the latter part of September or the first of October.

Q. You read Mr. Ferer's offer of December 2nd that has been introduced here as Plaintiff's Exhibit No. 2?

A. Yes, sir.

Q. Nothing was said in there about reserving the gas line, was there?

A. I don't remember.

Q. Look at it.

A. That is right.

Q. You had a telephone conversation with Mr. Ferer about the 2nd of January, which is the same date, for your recollection, that you wrote the letter Plaintiff's Exhibit No. 3. Did you speak to him at that time about reserving the gas line?

A. I don't know.

Q. I show you Plaintiff's Exhibit No. 3 and ask you if you said anything in there about reserving the gas line. [107]

A. Apparently not.

(Testimony of Harold E. Davis.)

Q. On the 8th of January, when Mr. Ferer and Mr. Clements came to your office and gave you the check for \$22,000, did you have any conversation with them at that time about reserving the gas line?

A. I may have. I don't remember.

Q. You wrote a memorandum when they were there at that time, did you? A. That is right.

Q. Will you look at that, Plaintiff's Exhibit No. 1, and tell me if there is anything on there that says anything about reserving the gas line? A. No, sir.

Q. Isn't it a matter of fact that the first time you heard anything about reserving that gas line was after you had accepted Mr. Ferer's bid and received his money?

A. No; I don't think it is.

Q. But you never discussed with Mr. Ferer or anybody connected with his organization the question of reserving that gas line?

A. Mr. Ferer got most of his information on which he based his bid from Mr. McGahan.

Mr. Sturzenacker: I move that answer be stricken as not responsive and a conclusion of the witness.

The Court: It may go out.

Mr. Sturzenacker: Will you read the question to the [108] witness?

(Question read by reporter.)

A. Not that I recall.

Q. You testified this morning that in your first conversation with Mr. Kelly he told you to make arrangements or to start to make arrangements to sell the surface equipment of the Casmalia lease, is that right?

A. That is correct.

(Testimony of Harold E. Davis.)

Q. And that was sometime in August or September, 1940? A. That is correct.

Q. Now, again, I ask you this. You read the communication of Mr. Ferer which was received in your office on the 11th of December, the bid, did you not?

A. Yes, sir.

The Court: Will you give us the exhibit number?

Mr. Sturzenacker: Exhibit No. 2.

Q. Is there anything you recall in this document that says anything about purchasing the surface equipment on the Casmalia property? A. No; there isn't.

Q. As a matter of fact, it says the refining and producing property, does it not?

A. I believe it does. I don't remember the words.

Q. And is there anything in your acceptance of the 2nd which—I will withdraw that question. Did you say anything in your telephone conversation with Mr. Ferer on the [109] 2nd of January about Mr. Ferer only purchasing the surface equipment on the Casmalia property?

A. I don't believe I did.

Q. And is there anything in your Exhibit No. 3, which is the letter of the 2nd of January, that says anything about Mr. Ferer purchasing only the surface equipment? A. No.

Q. And is there anything in your note or memorandum of the 8th day of January, Plaintiff's Exhibit No. 1, that says anything about just purchasing the surface equipment?

Mr. Paradise: If the court please, I object to this line of questions and move to strike the answers to them on the ground that it is either calling for a conclusion of

(Testimony of Harold E. Davis.)

the witness as to what the document means or else the instrument speaks for itself. If Mr. Sturzenacker is merely trying to bring out the fact that none of those three exhibits he is questioning the witness about uses the words "surface" or "surface equipment", I will willingly so stipulate but to ask the witness the questions which he has is calling for the conclusion of the witness as to the meaning of that particular document.

The Court: I think the fair meaning of the testimony and all counsel really means is that the term "surface equipment" is not used in any of the exhibits referred to and that that is all the witness means by his testimony.

Mr. Paradise: Yes. [110]

Mr. Sturzenacker: That is satisfactory.

Q. Mr. Davis, as I recall your testimony, and correct me if I am mistaken, on the 8th, Mr. Clements and Mr. Ferer came to your office in response to the letter which you had written on the 2nd, telling them to come in within 10 days with a check for \$22,000 and to deliver the check to you, and you made up this memorandum, and then some conversation was had between you and Mr. Clements relative to the sale by Richfield and the purchase by Ferer of some of the excepted property, to-wit, the tanks, is that right? A. That is right.

Q. And it was at that time you called Mr. Montgomery? A. That is right.

Q. And at that time that you talked about those tanks the check had been delivered and your memorandum had been delivered to Mr. Ferrer?

A. Which memorandum is that?

(Testimony of Harold E. Davis.)

Q. The memorandum of January 8th, which is just a receipt for the sale of the material and equipment of the Casmalia, Exhibit No. 1.

The Court: Do I understand the question is did the conversation between the witness and Mr. Montgomery over the telephone, in the presence of Mr. Ferer and Mr. Clements, take place after this receipt had been given to those gentlemen? Is that the question?

Mr. Sturzenacker: That is the question. [111]

A. Would you term this a receipt?

Q. Well, a document. I will withdraw the word "receipt" and let's call it a document rather than a receipt. It is not a receipt.

The Court: What is the exhibit number?

Mr. Sturzenacker: Exhibit No. 1.

A. There has been so much confusion, may I have the question again, please?

Q. Yes.

(Question read by reporter.)

Q. The word "receipt" is withdrawn and the words "Exhibit No. 1" are to be used.

A. The conversation took place before this Exhibit No. 1 was drawn up.

Q. And before or after the check was delivered by Mr. Ferer?

A. Well, during the meeting. I think their main purpose or primary purpose in coming in there was to deliver the check and it was during that particular time we discussed these various things and eventually wrote up this Exhibit No. 1.

(Testimony of Harold E. Davis.)

Q. In other words, the reason for their visit there was to comply with your letter of January 2nd—I speak of it as your letter, although it is signed by Mr. Kelly—to come in with a check? A. Yes, sir. [112]

Mr. Paradise: May I have that last answer, please?
(Answer read by reporter.)

The Court: Read the question and the answer.
(Record read by reporter.)

Q. By Mr. Sturzenacker: Mr. Davis, you are familiar with what is necessary to produce oil wells, aren't you? A. To a certain extent; yes.

Q. And you are familiar with this Anderson contract?
A. Yes, sir.

Q. Is it true that you can produce oil wells without the use of tubes or sucker rods, that is, that you can produce the oil wells in that field that were drilled there without the use of sucker rods or tubes?

Mr. Paradise: I object to that question on the ground there is no proper foundation. Mr. Davis has testified that he is a buyer and, while he is familiar with the equipment in an oil well, he has not been qualified as an expert on the production of oil from wells.

The Court: I am inclined to think there is merit in that criticism. Perhaps both sides can agree. Is there any mystery about this?

Mr. Paradise: Certainly, none. Mr. Montgomery will be the next witness, if the court please, and he can testify in detail about the production.

Mr. Krasne: I think this line of interrogation goes to the credibility of this witness, your Honor. [113]

(Testimony of Harold E. Davis.)

Mr. Sturzenacker: That is right, your Honor.

Mr. Krasne: The witness has testified that he had certain beliefs and understandings about what was to be sold and what wasn't and that these wells were to be reopened, and I think it is perfectly proper to find out from him if he didn't know, as a matter of fact, that he had already sold things out of the wells that would be essential and indispensable to the operation of the wells. I think it definitely goes to his credibility.

The Court: I think the question is still open to the criticism as to whether or not the witness has shown himself qualified as to what is essential to produce oil from a well.

Mr. Sturzenacker: All right, your Honor.

Q. Mr. Davis, do you know whether it is necessary to have a derrick on wells, such as were located on the Casmalia property, in order to produce oil from the wells?

A. It is not always necessary.

Q. Do you know of any well in that territory being produced without the use of a derrick?

A. I am not familiar with the entire field.

Q. This contract provides—you read certain portions of it and I am calling your attention to page 3 and to the paragraph designated as paragraph (a). You are familiar with that clause, are you?

A. Yes, sir.

Q. And under that clause he was to dismantle all of the [114] derricks, was he not?

A. That is correct.

(Testimony of Harold E. Davis.)

Q. And he was to take it away and burn up all of the wood and refuse resulting from that?

A. That is correct.

Q. And under paragraph (b) he was to clean out all of the cellars, pits, and sumps, and dispose of all the oil, tar and waste, wasn't he?

A. That is correct.

Q. And he was to fill up all of the cellars, pits, and sumps, was he not, under this contract?

A. That is correct.

Q. And you required him under this contract to leave the tubing and the sucker rods on the property until such time as he had completed this work, didn't you?

A. That is right.

Q. Were your instructions from Mr. Montgomery in the producing department that you were doing this for the purpose of getting the wells ready to produce?

A. I didn't question the reasons why they were removing the tubing and sucker rods.

Q. Did the production department tell you to have the tubing and the sucker rods removed, the derricks pulled down, the cellars and pits filled up and the sumps cleaned out and filled? Is that correct?

A. That is correct. [115]

Q. There was nothing up to this time, up to the time of the Anderson contract, Defendant's Exhibit A, where your department had sold anything off of the premises, was there?

A. I don't know. I can't answer that question.

(Testimony of Harold E. Davis.)

Q. Well, in connection with the producing equipment there, had you sold anything off?

A. It is still impossible for me to answer.

Q. Did you know it was necessary to use pumps to extract the oil from the ground in this field?

Mr. Paradise: I object to the question, if the court please, on the ground this witness has not as yet been qualified as an expert on the production.

The Court: As to that question, I think he can very well disclose whether or not he is sufficiently informed. If he answers one way, it will indicate he claims to be informed and, if he answers otherwise, it will indicate he doesn't know.

Mr. Paradise: Perhaps I misunderstood the question but I thought it assumed—

Mr. Sturzenacker: I asked him if he knew.

Mr. Paradise: To make the objection clear, if the court please, I think there is a lack of foundation because as the court knows, oil fields are entirely different, that is to say, one oil field may not be representative of another. These particular wells, as is already in evidence, were drilled from 1916 to 1922 and 1923 and the manner of [116] production of wells drilled under an entirely different method, that is to say, cable tool wells, as these wells were drilled and as appears in the affidavit, might be different and might produce in a manner entirely differently. And, unless this witness has been qualified as to those matters, I can't see that he can testify as to these particular things.

The Court: May we have the pending question read?

(Question read by reporter.)

(Testimony of Harold E. Davis.)

The Court: I think he may answer whether he has knowledge of the subject. If he has no knowledge, that will end the matter.

A. The only knowledge I have would be an indication that there were pumps and sucker rods and tubing in the wells. Other than that, I would have no working knowledge of the field.

Q. By Mr. Sturzenacker: In other words, the fact that your inventory showed that there were tubes and sucker rods and pumps in the wells would indicate to you they were necessary in order to produce those wells?

A. I would assume that.

Q. In this conversation on the 8th of January, when Mr. Ferer and Mr. Clements were present in your office and you had this telephonic conversation with Mr. Montgomery, did Mr. Montgomery say that he wanted to keep the tanks there for storage in the event they reopened the field?

A. In the event they reopen the wells for production. [117]

Q. That they reopened the wells?

A. That is right.

Q. From that you drew the conclusion it was from the wells that were already drilled on the property, did you?

A. That is correct.

Q. You knew there were pipelines running from those wells to certain storage tanks, did you not?

A. Yes, sir.

(Testimony of Harold E. Davis.)

Q. And you meant in this sale to include those pipelines running from those various wells to production tanks, did you not? A. That is right.

Q. Mr. Montgomery didn't tell you to reserve those pipelines from those wells to tanks, did he? A. No.

Mr. Paradise: To which tanks?

Mr. Sturzenacker: The storage tanks.

Mr. Paradise: Do you mean the six excluded tanks?

Mr. Sturzenacker: No; any storage tanks.

Q. You are familiar with the rest of the bids that have been received by your company, are you not?

A. Yes, sir.

Q. Mr. Paradise has produced a group of bids and I understand a great many of these bids are bidding on just particular articles, is that right?

A. That is correct. [118]

Q. And that there are only approximately three bids that were bidding on the whole equipment, is that right?

A. I don't know how many there were; three or four.

Q. Mr. Paradise just handed me a group of them and I will show you one of the Western Oil Fields Supply Company and one of R. Levinson and one of Dulien Steel Products, Inc., and ask you to examine those bids and tell me if those were three that were received by you for the purchase of the equipment at Casmalia.

A. Yes, sir.

Q. Do you know or now remember of any other bids that were received for the purchase of all the equipment at Casmalia or the equipment you were offering at Casmalia?

(Testimony of Harold E. Davis.)

Mr. Paradise: That assumes a fact not in evidence, does it not? Are you placing any interpretation by that question on these three particular ones?

Mr. Sturzenacker: No.

Q. For your information, I have glanced through these bids Mr. Paradise has handed me and I do not find any that apparently bid on all of the property. One bids on the warehouses and so forth.

A. Yes. May I have that question again, please?

Mr. Sturzenacker: Will you read it?

(Question read by reporter.)

A. No.

Q. Calling your attention to the first one that you have [119] in your hand, which is a handwritten letter addressed to Richfield Oil Corporation, dated November 22, 1940 and signed R. Levinson, I will ask you, refreshing your memory from that, what was his bid?

Mr. Paradise: Before the witness testifies as to the contents of the document, are you offering these in evidence?

Mr. Sturzenacker: They are your files. I don't know whether I should offer them or not, Mr. Paradise. I was merely asking the witness to refresh his memory from these bids rather than to clutter up the record. I don't think it will be necessary to clutter up the record with these bids. He said yesterday he couldn't recall because they were in writing.

Mr. Paradise: I will object to any oral testimony concerning the bids and also object to the introduction of the bids in evidence, if the court please.

Mr. Sturzenacker: I will withdraw the question.

(Testimony of Harold E. Davis.)

Q. Will you glance through these three bids which you have in your hand and, from glancing through these and reading them through, would you now be able to answer a question as to what was the amount of other bids received from other people for the purchase of the equipment at Casmalia?

Mr. Paradise: I will object to that on the same ground, if the court please. It is asking for the contents of a written instrument. The plaintiff is not offering the [120] instrument before the court. If he were, I would object on various grounds, including the immateriality of the bids as a part of this issue between the plaintiff and the defendant.

The Court: Assuming that the plaintiff were to offer the contents of some of the bids, upon what theory would you present the evidence?

Mr. Sturzenacker: The only theory is that, these bids being half the amount of the bid of Ferer & Sons, it should have indicated to this witness, who was accepting this bid, that, when Ferer & Sons bid \$22,000 as against bids of \$12,000 and \$7,000 from other people, there was some difference in the property which the purchasers in the various instances wished to acquire.

The Court: Do I understand that among the bids to which you are now referring, which are not yet in evidence, two different bidders offered, respectively, \$7,000 and \$12,000 for the identical property?

Mr. Sturzenacker: That is correct.

Mr. Paradise: I must object to that—

(Testimony of Harold E. Davis.)

The Court: Do you think that the argument about the discrepancy in the figures is equally applicable to the two bids for \$7,000 and \$12,000, respectively? In other words, where will it lead us?

Mr. Sturzenacker: It leads to this, your Honor. Mr. Davis has indicated that he discussed with Mr. Clements, associated with the plaintiff in this action, the purchase of [121] this equipment; that he also communicated to Mr. McGahan, of Long Beach, the fact that this equipment was for sale. The affidavit of Mr. McGahan and the depositions taken by the defendant indicate that in their defense of reformation of the contract they will attempt to show that McGahan furnished Aaron Ferer, the plaintiff in this action, with certain information about certain equipment that was to be sold. It will be our contention that we received our information from Mr. Davis. Mr. Davis says he didn't discuss this sale with other people except Mr. Clements and Mr. McGahan, their own agent. It is our contention that our information came from Mr. Davis. We bid on the equipment that Mr. Davis said was for sale and we bid on that alone and in doing so we offered \$22,000, whereas the rest of the bids came in from people who had gotten their information from Mr. McGahan, which bids called for \$12,750, \$12,500 and so forth. Well, this other bid was not for \$7,100. I notice that they had an additional bid besides that of \$1,250, making \$8,350 all together. I didn't note that they had made a separate bid for 37 boilers. That is the reason for this testimony. It should not come until the

(Testimony of Harold E. Davis.)

defendant's case comes along but we are taking this witness' testimony in order to perpetuate it and out of order and, therefore, that is the reason for asking these questions.

Mr. Krasne: I should like to add one more word, if I may, with respect to why this line of evidence should be [122] admissible. After all, at least in so far as the reformation of contract phase of this litigation is concerned, we are in equity. The charge is made that a mistake has been made by the defendant and that the plaintiff knew of that mistake or should have known of it. I say to your Honor that the shoe is on the other foot. If when this witness, who receives bids, receives a bid that does not seem to be ambiguous on its face, calling for the purchase of everything, and when that bidder, the plaintiff in this action, offers \$22,000, and when this witness testifies that he had something else in mind, I think, when he realized that the plaintiff was bidding \$10,000 more, or a \$22,000 bid, than the next highest bidder, there should have been a duty upon him to sit down with Mr. Ferer and say, "I wonder if you are not bidding for more than we intend to sell." The discrepancy in figures in the bids was so great that this witness or Richfield should themselves have done something to have tried to correct the mistake. It should have been obvious to him. And I think it is admissible for that purpose.

Mr. Paradise: If the court please, I believe this would be the most highly speculative and conjectural type of evidence to be received on an inquiry of this sort. Assuming these particular bids were offered in evidence, it would be perfectly proper, I presume, for the defendant to bring

(Testimony of Harold E. Davis.)

into court each one of our bidders and find out what he had in mind in arriving at that particular amount. The amount [123] involved, I presume, is determined by each bidder based upon his own circumstances, that is to say, that he is buying salvage equipment for resale. If one particular bidder has an available market for the product and another one does not, the one who has the market will bid more. And if one expects higher costs, he will bid less than another one. None of those matters enter into the good faith of the defendant. Obviously, I will acknowledge and offer to stipulate that Richfield Oil Corporation accepted the highest bid and I doubt if counsel for the plaintiff would expect the Corporation to do otherwise. However, I can't see any possible merit in putting in these other offers before the court for the reason it would raise various collateral matters and they are too speculative and conjectural to have any probative value whatsoever and are entirely immaterial in determining the intention of this defendant or of the plaintiff as to what was covered. The bids themselves don't show on their faces whether the same property was covered or I mean whether the particular things were covered or whether it was others. And, to make the point clearer, there will be before this court, if this case ever gets to the point of proof of damages, the question of the costs of abandonment of oil wells and the question of the comparison of the costs of abandonment with the recoverable value of the casing. It has been the position of this defendant throughout this entire proceeding that the cost of abandonment is greatly in excess of the recoverable value. [124] If any of these particular bidders who have

(Testimony of Harold E. Davis.)

bid \$8,000 and \$12,000 were familiar with the costs of abandonment of oil wells, that itself might have entered into the question as to what they bid, in other words, the costs of the work involved as compared with their expectation of over-all recovery. For that reason I say that the bids are both speculative and conjectural and entirely immaterial.

The Court : Are you offering certain particular bids?

Mr. Sturzenacker: The question is really, as I stated to the witness, after reading these bids over, can he refresh his memory, which he couldn't do yesterday, as to the amount of these respective bids.

The Court: I think the objection is well taken so far as it undertakes to go into the contents of written instruments. And that brings us back to whether or not you are proposing to offer in evidence the written documents.

Mr. Sturzenacker: Your Honor, at this time we will offer these three documents as one exhibit.

The Clerk: Plaintiff's Exhibit No. 5.

Mr. Paradise: The same objection.

The Court: Let me see them. They may be marked for identification and the objection is sustained. They may be marked for identification only.

Q. By Mr. Sturzenacker: Mr. Davis, at this time can you tell me what the next highest lump sum bid as received by Richfield for this property was? [125]

Mr. Paradise: I object to the question on the same grounds already stated and on the further ground of lack of proper foundation.

The Court: Sustained.

(Testimony of Harold E. Davis.)

Q. By Mr. Sturzenacker: Do you know, as a matter of fact, the next highest bid received was \$12,750?

Mr. Paradise: The same objection.

The Court: Sustained.

Q. By Mr. Sturzenacker: Do you know of any other bid that was received by Richfield, except the Aaron Ferer bid, higher than \$12,500?

Mr. Paradise: The same objection.

The Court: Sustained.

Mr. Krasne: Will counsel stipulate that these three particular bids which have been introduced for identification were taken from a group of bids that counsel produced? And will counsel stipulate that the three which have so been introduced for identification represent the highest bids, lump bids or the only lump bids, that were made?

Mr. Paradise: Perhaps I haven't made my objection clear. I won't stipulate to anything concerning the contents of the documents. I will stipulate to the fact that Richfield accepted the highest bid that was offered but whether the offers were on the same basis or on different bases, there is nothing before the court as to that.

Q. By Mr. Sturzenacker: Have you any way of determining [126] mining what the next highest bid was except by the use of the bids which I handed you a few moments ago? A. No.

Q. Mr. Davis, you commented a little while ago on a conversation that you had with Mr. Montgomery relative to these tanks and you placed that conversation as of the 8th day of January, at the time Mr. Ferer and Mr.

(Testimony of Harold E. Davis.)

Clements came to your office and delivered the check for the \$22,000. Refreshing your memory, did you afterwards have a conversation with Mr. Ferer and Mr. Clements, in the office of Mr. Paradise, at the time the formal contract was written? A. About the tanks?

Q. Did you actually have a conversation about anything? A. Oh, yes.

Q. And isn't it a fact that at that time you picked up the telephone and called Mr. Montgomery and asked him if he wanted to sell those six storage tanks on the Cas-malia property?

A. Not in Mr. Paradise's office.

Q. You didn't have that conversation in Mr. Paradise's office? A. Not that I recall.

Q. At the completion of the handing of this note or memorandum Exhibit No. 1 to Mr. Ferer and Mr. Clements, did you have any further conversation with them?

A. In my office or Mr. Paradise's office? [127]

Q. In your office, on that date. A. I think not.

Q. As a matter of fact, didn't you call Mr. Paradise and ask him about reducing this to a formal contract and he told you that he was tied up or something of the kind, and you told these gentlemen they would have to come back again, at which time Mr. Paradise could reduce this to a formal contract?

A. I thought we went up to Mr. Paradise's office right away.

Q. You what?

A. I thought we went up to Mr. Paradise's office right away.

(Testimony of Harold E. Davis.)

Q. You went up to Mr. Paradise's office with them on the same day? A. That is correct.

Q. And did you have a conversation with Mr. Paradise and the gentlemen there? A. That is right.

Q. And what was said at that conversation? This is still on the 8th.

A. We merely discussed the formulation of the contract.

Q. And did Mr. Paradise make any notes or record of it? A. I presume he did.

Q. Did you hand him the offer at that time?

A. What offer was that? [128]

Q. The offer of Mr. Ferer, heretofore introduced as Exhibit No. 2, the offer of Ferer & Sons to purchase this for \$22,000, on the 10th day of December.

A. I don't think I showed Mr. Paradise that offer.

Q. Did you show him a copy of your memorandum that you had handed to Mr. Clements and Mr. Ferer that day? A. Yes, sir.

Q. And did you say anything to Mr. Paradise about drawing a contract between Ferer and the Richfield Company about selling this property? A. Yes.

Q. Did you tell Mr. Paradise about excluding various things from the contract?

A. I believe that was covered in Exhibit 1.

Q. And did you tell Mr. Paradise that Richfield was selling to Mr. Ferer everything except those excluded items?

A. I don't remember just how that thing was worded. That was just a general outline of the proposed contract.

(Testimony of Harold E. Davis.)

Q. Did you tell him that you were selling, subject to the exceptions noted in the memorandum, all the equipment and facilities now located on the land described, the Casmalia property?

A. May I see that exhibit and I can answer the question?

The Court: For the purpose of the record, will you indicate what the witness is examining?

Mr. Sturzenacker: Exhibit No. 1. [129]

A. Now, may I have the question again?

Mr. Sturzenacker: Will you read the question to the witness?

(Question read by reporter.)

A. It is covered in this exhibit.

Mr. Krasne: I want to interrupt. I think the record should show that there are signals going on between this witness and Mr. Kelly that I see. And, if they continue, I shall have to ask the court to exclude all witnesses from this courtroom.

The Court: Now, that is a very serious charge, Mr. Krasne. I think you should amplify that statement in fairness not only to yourself but to the witness on the stand and to Mr. Kelly, the gentleman referred to.

Mr. Krasne: I will state to the court, and I will state it under oath, that, while this witness was hesitating in replying to this question, I saw Mr. Kelly go like this to him. Now, I think that I owe it to my client and to the court to call that to the court's attention. I don't say that I am infallible in my observations and I may be in error but that is what I saw, and I owe it to my client to call it to the court's attention.

(Testimony of Harold E. Davis.)

The Court: I will ask Mr. Kelly to step forward. You just heard the statement made by one of plaintiff's counsel. What have you to say?

Mr. Kelly: I absolutely deny it, definitely. [130]

The Court: And, Mr. Davis, what have you to say?

A. I wasn't even looking at him.

The Court: Do you wish to go any further in the matter, Mr. Krasne?

Mr. Krasne: Your Honor, I think I have done my duty. I have called the court's attention to it and, if I am in error, I will apologize. But I think Mr. Kelly should be very careful about making any gestures that might be misconstrued or misinterpreted. I certainly didn't make that statement to the court to try to make an impression. There is no jury here. I saw it and what I saw I reported to the court.

The Court: Do you recall making any motions that you intended to be conveyed to anybody in the courtroom?

Mr. Kelly: Definitely not.

The Court: For the present, I see nothing further to be done in the matter.

Mr. Sturzenacker: May we have the question, Mr. Reporter, the last question?

The Court: I think we shall have to defer further interrogation for the present. We will take a recess until 2:00 o'clock this afternoon.

(Whereupon a recess was taken until 2:00 o'clock p. m. of the same day.) [131]

(Testimony of Harold E. Davis.)

Afternoon Session

2:00 O'clock.

(Appearances as last noted.)

The Court: May we have the witness resume the stand?

H. E. DAVIS,
recalled.

Recross Examination

resumed.

Mr. Paradise: If the Court please, I am gravely concerned over the charge that was made by Mr. Krasne just before the close of the morning session. I must apologize for not making a statement about it earlier but I was taken completely by surprise. As I recollect it, I was reading my notes at the time. I would like the privilege, if the court please, in fairness both to the court and to both sides, to have Mr. Kelly be examined under oath, if the court feels that it is proper. The court has already examined Mr. Kelly by direct questions but Mr. Kelly was not at that time under oath. And I would like to examine Mr. Davis further on that same proposition, on the same subject matter.

The Court: I see no occasion for going further in the matter. In other words, it is conceivable that in the pressure that is entailed in the trial of a case impressions are gained. A man might be moving around in his seat in the [132] courtroom and create one impression in the mind of one onlooker and an altogether different impression in the mind of someone else and yet be wholly innocent in

(Testimony of Harold E. Davis.)

moving about. It is like what sometimes amuses one person has an altogether different effect on someone else. So I am satisfied that there is nothing further that need concern us.

Mr. Sturzenacker: Mr. Reporter, may we have that last question that was unanswered?

(Record read by reporter.)

Q. By Mr. Sturzenacker: And your best recollection at the present time is that you did not show Mr. Paradise the offer of Ferer & Sons on the 10th day of December or the acceptance of the offer by the Richfield Corporation on the 2nd day of January?

A. On the occasion of that particular meeting, you mean, don't you?

Q. Yes A. That is correct.

The Court: May we have the exhibit numbers of those two instruments?

Mr. Sturzenacker: Exhibits 2 and 3. We offer Exhibit No. 2 and the acceptance, it being Exhibit No. 3.

Q. At the time of making this Ferer deal, had Mr. Anderson completed his work on the property?

The Court: When you say at the time of making the Ferer deal, are you referring to the entire period of negotiations? [133]

Mr. Sturzenacker: No. I had better withdraw that question.

Q. On January 8th, at the time Mr. Ferer and Mr. Clements brought the money to your office—

A. 1941?

(Testimony of Harold E. Davis.)

Q. 1941—had Mr. Anderson completed his work on the property? A. Yes, sir.

Q. Had all of the derricks been removed?

A. Yes; they had.

Q. Had all—

A. May I make a statement there?

Q. Yes. A. My records indicate that they had.

Q. When you were up there in September, had all of the derricks been removed?

A. I didn't see any still standing.

Q. You told us you didn't go over all of the property, did you? A. That is correct.

Q. Your records indicate that Mr. Anderson had finished his work? A. That is right.

Q. On January 8th? A. Yes, sir.

Q. Do your records indicate that the pits and the [134] cellars of the various wells had all been filled as provided in the Anderson contract?

A. My records indicate that all of the work covered in the Anderson contract had been completed.

Q. Including the cleaning out of the sumps and filling them? A. That is correct.

Q. Did you know where this loading rack was located?

A. Yes, sir.

Q. And how far it was away from the actual lease or the actual property upon which the refinery was located?

A. I don't know exactly how far away that loading rack was.

(Testimony of Harold E. Davis.)

Q. Was there a pipeline running from the refinery or from the tanks on the property to the loading rack?

A. I know there was a pipeline from the property to the loading rack.

Q. Do you know how deep that pipeline was buried?

A. No; I don't.

Q. Your description of surface equipment is that which is above the ground and that which is buried to a shallow depth below the ground, is that correct?

A. That is correct.

Q. How deep would you say that shallow burying would be? A. About two feet.

Q. Did you know that a great portion—or is it true [135] that a great portion of the refining pipes were below two feet below the ground?

A. I didn't know that.

Q. Did you supply Mr. Paradise with the rest of the information that is contained in this contract Plaintiff's Exhibit No. 4? A. No, sir.

Q. Did anybody in your presence supply him with any information relative to this contract?

Mr. Paradise: May I ask what portions of the contract Mr. Sturzenacker is referring to?

Mr. Sturzenacker: Any portion.

A. May I have that question again?

Mr. Sturzenacker: Will you read the question?

(Question read by reporter.)

A. Yes, sir.

Q. Who? A. Mr. McGahan.

(Testimony of Harold E. Davis.)

Q. Was that at the same time or when was that?

A. One time that I know of was at the same time when Mr. Ferer and Mr. Clements and Mr. Paradise and Mr. McGahan and I all met in Mr. Paradise's office.

Q. That was about the day the contract was executed or very close thereto, was it?

A. I would say that was the day that we discussed the formulation of the contract. [136]

Q. And, if I told you that contract was dated on the 17th of January, would you say it was about that date?

A. I would say it was before then.

Q. Before the 17th of January? A. Yes, sir.

Q. Did you know that the boilers on the property were used or had been used at one time in the production of oil from that property? A. The boilers?

Q. Yes. A. No; I didn't know that.

Q. Do you recall of any time prior to the time that you gathered in the office of Mr. Paradise, on or about the 17th of January, that you ever showed Mr. Paradise the offer of Aaron Ferer or the acceptance, which have been introduced here as Exhibits 2 and 3?

A. I don't recall ever having showed it to him.

Q. Do you recall at this conference in the office of Mr. McGahan stating to Mr. Paradise, in the presence of Mr. Clements and Mr. Ferer, that the only property sold or contemplated to be sold was the surface equipment?

A. Would you mind repeating that question to me?

(Question read by reporter.)

A. I don't recall any such statement.

(Testimony of Harold E. Davis.)

Q. And you were never present at any other conference between Mr. Ferer, Mr. Clements and Mr. McGahan? [137]

A. No.

Q. That was the only time you ever saw them together in Mr. Paradise's office?

A. All five of us; that is correct.

Mr. Sturzenacker: That is all.

Redirect Examination.

Q. By Mr. Paradise: Mr. Davis, I believe you stated in reply to Mr. Sturzenacker's question that you had not participated in any conversations concerning the exclusion of the gas lines. Did I correctly understand your answer?

A. That I had not participated in any?

Q. Yes. Did you discuss the exclusion of the gas lines with either Mr. Ferer or Mr. Clements on any occasion?

A. Oh, yes; I did.

Q. Will you state when that occurred?

A. I believe that occurred on the occasion they came in and left the check with us for the sale of the equipment.

Q. In your affidavit, Mr. Davis, I call your attention to a paragraph commencing at line 29 on page 3 and extending to line 9 on page 4 and ask you to read that and state whether or not that is correct.

A. Yes; that is correct.

Q. I believe you testified this morning as to the common meaning of the phrase "surface equipment." I will ask you if in the common meaning of that expression pipelines are [138] ever referred to as surface equipment?

A. Yes; they are.

(Testimony of Harold E. Davis.)

Q. Are they ever referred to as other than surface equipment, that is to say, are they ever referred to as sub-surface equipment?

A. I have never heard them referred to as that.

Q. Is that true regardless of the depth to which some of them may be buried under the surface?

A. As far as my knowledge is concerned, it is true.

Mr. Paradise: That is all.

Recross Examination.

Q. By Mr. Sturzenacker: After reading your affidavit, does it refresh your recollection as to when you first discussed these gas lines or this gas line exclusion with Mr. Ferer and Mr. Clements?

A. Yes; it does. I would like to correct a statement which I made this morning regarding those. Not only the gas lines but also the water lines and the water pump and the tanks. That discussion actually occurred with Mr. Montgomery sometime during the first part of January.

Q. And after your conference with Mr. Clements and Mr. Ferer, at which time they delivered the check?

A. I don't believe it was after that date. I believe it was before that time or about that time. I don't know the exact date. [139]

Q. Well, what is your best recollection now; that the first time you discussed these gas lines with Mr. Ferer and Mr. Clements was on the 8th day of January or was it at the meeting in Mr. Paradise's office sometime after the 8th and before the 17th?

A. They were discussed at the meeting with Mr. Ferer and Mr. Clements both in my office and in Mr. Paradise's office on the same day.

(Testimony of Harold E. Davis.)

Q. And was that discussed with them before you drew this memorandum or after, Exhibit No. 1?

A. I don't recall that.

Q. But you did not include the gas line in the memorandum Exhibit No. 1? A. That is correct.

Q. You did include the water lines and the pumps, however? A. That also is correct.

Q. Would that in any way refresh your recollection as to whether or not you discussed the water lines on the 8th?

Mr. Paradise: With whom?

Q. By Mr. Sturzenacker: With Mr. Ferer and Mr. Clements. A. The water lines?

Q. I mean the gas lines.

A. Well, we still discussed the gas lines at the same time.

Q. Wasn't it, as a matter of fact, on the 8th, when Mr. [140] Clements and Mr. Ferer were there, you actually discussed the water lines and the pumps?

A. Yes.

Q. And thereafter in Mr. Paradise's office, when you all gathered there sometime after the 8th and before the 17th, the gas lines were discussed?

A. I believe they were discussed in my office also.

Q. And you knew when you drew the memorandum that the gas line was to be excluded? A. Yes.

Q. Why didn't you exclude it then?

A. I undoubtedly forgot it.

Mr. Sturzenacker: That is all.

(Testimony of Harold E. Davis.)

Mr. Paradise: That is all. Would it be convenient to the court and counsel to have Mr. Montgomery testify now?

The Court: About how long do you think the direct examination of Mr. Montgomery will be?

Mr. Paradise: I would say not over half to three-quarters of an hour.

Mr. Sturzenacker: May I inquire if there is any question that Mr. Montgomery will not be here later on, when the case is set down for hearing?

Mr. Paradise: Frankly, if the court please, I am not quite sure as to the court's desires with reference to the further conduct of the case. Does the court intent to proceed next week with a portion of it and then defer a further [141] portion of it until January?

The Court: The thought is that we shall not be able to proceed with the trial of the case to the extent of requiring the plaintiff to put in its proof because of the position taken by counsel for the plaintiff yesterday. Under those circumstances, I indicated that a continuance would be granted to permit plaintiff's counsel to make that preparation which he said he had been unable to make. That would mean that we would not expect plaintiff to go forward with his case until some later date but that we would expect to have the interrogation of the persons whose affidavits were filed and whose cross-examination plaintiff's counsel, I think, is prepared to carry on now.

Mr. Paradise: If the plaintiff came to this trial on the merits, expecting the defendant to proceed with its proof on the counterclaim, I can't quite understand their objection to our proceeding in that fashion, that is to say,

(Testimony of Harold E. Davis.)

Mr. Zeidenfeld was the one whom the court referred to, was he not, as the one who might not be available in January?

The Court: Yes.

Mr. Paradise: I believe Mr. Zeidenfeld will be available for the balance of the afternoon and, if the court will adjourn until next week, we can get Mr. Zeidenfeld's testimony before the court before the adjournment to January and, if possible, I would like to examine Mr. Montgomery at this time, that is, if satisfactory to the court and counsel. [142]

Mr. Sturzenacker: It doesn't make any difference to counsel. We are perfectly willing to take Mr. Montgomery's testimony but I thought, inasmuch as I understood we were going to cross-examine those people who had filed affidavits, and Mr. Montgomery having no affidavit on file, and if he would be available here at the hearing, the defendant should proceed in the regular manner.

The Court: Would Mr. Montgomery's testimony be the only testimony you would expect to offer?

Mr. Paradise: Yes. And I might say the reason for wanting to put Mr. Montgomery's testimony in at this time is that Mr. Montgomery is thoroughly familiar with the oil operations which were gone into on cross-examination of the former witness, of which I am afraid the former witness didn't know a great deal, and it might clear up any difficulties or confusion in that regard.

The Court: I think that we had better give counsel the opportunity to interrogate and cross-examine those who have filed affidavits and have that out of the way first.

Mr. Paradise: All right.

Mr. Krasne: Mr. Kelly. [143]

HERBERT HUDSON KELLY,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Q. By the Clerk: Will you state your name?

A. Herbert Hudson Kelly.

Cross-Examination.

Mr. Sturzenacker: Before proceeding with the cross-examination of Mr. Kelly, may we refer to the affidavit of Mr. Kelly on file and make certain motions to strike? On page 2 of the affidavit, line 4, we move to strike that portion beginning with the words, "That at no time, either before or after the execution of said contract between Richfield and Aaron Ferer & Sons, did affiant intend to sell to Aaron Ferer & Sons the casing in any of the oil wells located upon the Casmalia property, nor did affiant intend that any of the wells upon such property be abandoned." The motion is made upon the ground that it is a conclusion and that it is not based upon any facts.

The Court: I think that is similar to the language we struck out of Mr. Davis' affidavit.

Mr. Paradise: Yes. If the court please, since Mr. Sturzenacker made his former motion with respect to Mr. Davis' affidavit and asked that a similar statement of intention be stricken, I have had occasion to examine the law on the subject and find that it is a settled rule of law [144] that, whenever the motive, belief, or intention of a person is a material fact to be proved under the issue, it may be proved by the direct testimony of such person, whether he is a party to the suit or not. There is a very thorough discussion of the entire proposition, as well as a

(Testimony of Herbert Hudson Kelly.)

compilation of the cases bearing on that subject, contained in *Howell v. Mays*, 107 Cal. App. 751. That particular case was an action by the grantor to set aside a deed of conveyance on the ground that there had been no delivery of the deed, and the question of the intention of the grantor was a material issue, as is the intention in a case for reformation. In that case a question was asked of the witness as follows: "When this paper was signed by you, that deed, did you intend to convey to them at that time the title that you had in the property?" This was objected to and the court, on appeal, held that the examination of a witness as to his own intention or his own statements was perfectly proper and competent evidence, and then went into a long, detailed discussion of it.

The same rule is set forth in the case of *Horton v. Winbigler*, 175 Cal. 149, which was an action to reform a contract.

One of the earlier cases on the subject is the case of *People v. Eel River Railroad Co.*, in 98 Cal. 665. In that case the testimony of directors of a corporation as to their intention and the intention of the corporation with reference [145] to a dedication of a road was held admissible.

Since examining those cases, if the court please, I feel that the statement in the affidavit is quite proper and should not be stricken.

Mr. Sturzenacker: Our motion is made just a little bit differently from that, may it please the court, and that is that this statement as it appears in the affidavit is not a statement of intention but a conclusion. And the same thing was true in the Davis affidavit.

(Testimony of Herbert Hudson Kelly.)

The Court: I think we ought to determine to what extent this witness had anything to do with the negotiations leading up to or attending the making of the contract that is in question here. I think that would have a bearing.

Mr. Sturzenacker: I think it may be stipulated that this witness had nothing to do with it so far as the plaintiff is concerned.

Mr. Paradise: I can't stipulate to that, Mr. Sturzenacker, for this reason, that it appears from the affidavit, as I recall it, that the contract was executed by this witness and that no other persons who negotiated the contract, particularly Harold Davis, had any authority or power to bind Richfield Oil Corporation contractually. From that the intention of this witness, who is the only one who could have bound Richfield in this action, is a very material fact in this issue.

The Court: I think what we ought to do at present is [146] this, to deny the motion without prejudice to your renewing it. And I will be glad to examine such authorities as both sides may wish to bring to the court's attention. May I have those cases again?

Mr. Paradise: Yes; *Howell v. Mays*, 107 Cal. App. 751, and the particular discussion occurs on pages 753 and 754. At that point a discussion is given of the argument—

The Court: No; I don't want you to go into detail. I merely want the citations.

Mr. Paradise: There is a full citation of the cases in that case. The other two cases I referred to are *Horton v. Winbigler*, 175 Cal. 149, and *People v. Eel River Railroad Co.*, 98 Cal. 665 at page 669.

(Testimony of Herbert Hudson Kelly.)

Mr. Sturzenacker: Going on down on the same page, your Honor, to line 16, I move to strike, and perhaps it would be a good idea for me to mention the grounds of the motion so the court will have them in mind. I move to strike the following portion on the grounds that it is on information and belief, and, therefore, constitutes hearsay and is a conclusion on the part of this witness, and that no foundation has been laid for the reception of such testimony and the witness is unqualified to so state. It begins with the words, "That affiant was and is informed that the production of oil from said wells was discontinued on or about October of 1925 because of a decreased market value at such time for such oil. That affiant was and is informed that at the time [147] of the cessation of such production activity, the reservoir of oil underlying such property had not been exhausted and at such time there remained and now remains a reservoir of oil underlying said property valued at approximately \$3,000,000, which reservoir is owned by Richfield Oil Corporation. That said wells are not now abandoned and affiant is informed by the production department of Richfield Oil Corporation that said wells may be operated for the production of oil therefrom." It is our contention that is strictly a hearsay statement. He is not, according to his testimony, an engineer or a person qualified in any way to estimate the amount of oil, if there is any at all or was when the property was abandoned, or any item that is mentioned in here. And it appears that he got his information from some other source, which is strictly hearsay.

(Testimony of Herbert Hudson Kelly.)

The Court: Don't you think that those portions of Mr. Kelly's affidavit that simply recite matters of information and belief ought to be stricken out?

Mr. Paradise: That is quite satisfactory, your Honor.

The Court: They are ordered stricken out.

Mr. Sturzenacker: Dropping down to the bottom of page 2, line 32, I move to strike, on the ground that it is strictly a conclusion, beginning with the words, "which removal was deemed advisable because of the worn condition thereof. That at the time of the removal of such derricks, tubing and rods, the wells were not abandoned and the casing was left in such [148] wells and the wells were each capped at the surface thereof in order that such wells might in the future be opened and re-entered for the production of oil therefrom." That apparently is a conclusion. It says, "deemed advisable" and it says "because of the worn condition", and there is no showing that he ever saw them or ever knew them or knew anything about them.

The Court: It is not clear in my mind as to whether the recitals to which you are now directing our attention are based upon the witness' personal knowledge or merely what somebody else told him. I think, once that is cleared up, the ruling can readily be made.

Mr. Paradise: Would the court prefer I make a statement on that or request the witness to do so?

The Court: If you are going to oppose the motion, then I think he ought to ask the witness whether that statement was based upon his own knowledge or upon what somebody else told him.

(Testimony of Herbert Hudson Kelly.)

Mr. Paradise: Shall I examine the witness on that point or Mr. Sturzenacker?

Mr. Sturzenacker: Go ahead.

Q. By Mr. Paradise: Mr. Kelly, did you hear the part that was quoted by Mr. Sturzenacker? Or I will reread it again in order that it may be before you. The affidavit states, "That during the year preceding the date of the execution of the contract dated January 17, 1941 [149] between Richfield and Aaron Ferer & Sons, Richfield Oil Corporation removed from said wells the derricks and the tubing and rods installed therein, which removal was deemed advisable because of the worn condition thereof. That at the time of the removal of such derricks, tubing and rods, the wells were not abandoned and the casing was left in such wells and the wells were each capped at the surface thereof in order that such wells might in the future be opened and re-entered for the production of oil therefrom." Will you state whether you have personal knowledge of the facts so stated?

A. I have no personal knowledge.

Q. Did you examine the property yourself?

A. No, sir.

Q. Where did you learn this information?

A. Both in management meetings and from the production department.

Q. Will you describe what you mean by management meetings?

Mr. Sturzenacker: I will object to that question because I don't think it would make any difference how he got it. It would be hearsay anyway, unquestionably.

(Testimony of Herbert Hudson Kelly.)

The Court: It just occurs to me that this line of evidence would be admissible, namely, as I understand it, this witness is the gentleman who executed the contract on behalf of the defendant. I think it is pertinent to inquire [150] as to what facts were brought to his attention or had been brought to his attention and, therefore, were within the category of the knowledge that he thereby acquired at the time he executed this contract respecting the matters here referred to. I think it perhaps would be inadvisable for me to explain my views in detail in the hearing of the witness. But, if we are privileged to inquire into what was intended by the parties, including what was known by the person who executed the contract on behalf of one of the parties, then I think it is relevant to know what matters the witness had in mind, what he had before him, when he undertook to bind his principal. I think, if I said much more, perhaps I would be apprising the witness of matters that would be the subject of inquiry.

Mr. Sturzenacker: Going down here, may it please the court, to page 3, line 10, we move to strike the remainder of that paragraph on the ground it is all alleged on information, that, "That affiant was and is informed by the production department of Richfield Oil Corporation that no casing can be removed from any oil well in California without abandonment of such well." The entire paragraph is made up on information and, therefore, belief.

Mr. Paradise: I will consent to the striking of that clause. That is from lines 10 to 27?

Mr. Sturzenacker: That is right.

(Testimony of Herbert Hudson Kelly.)

The Court: That is, beginning with the words, "That [151] affiant was"?

Mr. Sturzenacker: That is right.

The Court: And ending where?

Mr. Sturzenacker: And ending with the word "wells" in line 27.

The Court: It is ordered stricken out.

Mr. Sturzenacker: And on page 4, line 5, beginning with the word "That" and to and including the word "property" in line 14, we move to strike, the motion being made on the same grounds. Probably it would be subject to the same ruling the court made in relation to the portion on page 3, which was not stricken, the court's comments being probably the same, because it is a question of intention and what was intended. And, if we accept the court's ruling on the other as a ruling on this, I think it would probably be the same.

The Court: Are you resisting the motion?

Mr. Paradise: I understood Mr. Sturzenacker was willing to accept the same ruling, that is to say, a deferment of the ruling until some later time, is that correct, or denying the motion without prejudice?

Mr. Sturzenacker: That is correct.

The Court: That will mean that you will be free to present authorities later, Mr. Sturzenacker.

Mr. Sturzenacker: That is right.

(Testimony of Herbert Hudson Kelly.)

Q. Mr. Kelly, when was the first time that you ever met Mr. Ferer or Mr. Clements in connection with this transaction? [152]

A. That was January 8, 1941, when they brought in the check.

Q. Were you present when the check was brought in or was it delivered to you afterwards?

A. No; Mr. Davis brought the check from his office to mine and I said I would like to meet the gentlemen.

Q. And you said you would like to meet the gentlemen? A. Yes.

Q. And that was the first time you had met them?

A. Yes.

Q. And at that time this acceptance of the 2nd of January, Plaintiff's Exhibit No. 3, had already been signed by you and forwarded, had it?

A. That is right; January 2nd.

Q. Mr. Kelly, prior to the signing of this letter, which I understand Mr. Davis dictated and you signed—

A. Correct.

Q. Prior to that time, had you ever seen the offer of Mr. Ferer, Exhibit No. 2?

A. Yes; that would come across my desk before issuance to Mr. Davis.

Q. Do you have any recollection of reading it and receiving it independently of the fact that it would automatically come across your desk?

A. All mail for the purchasing department crosses my desk and it has to be handled that way. So there would be no [153] reason for a particular letter to be emphasized in my mind.

(Testimony of Herbert Hudson Kelly.)

Q. You have no independent recollection of ever seeing this letter? A. No, sir.

Q. Do you have any independent recollection of seeing Exhibit No. 3, this letter signed by Mr. Davis, except that your signature appears there and that it went through in the regular routine?

A. Nothing. That was just a transaction.

Q. You have no independent recollection of it?

A. No.

Q. I show you Plaintiff's Exhibit No. 1, which apparently is a memorandum of sale. You heard Mr. Davis' testimony that he prepared it and so forth. Did you ever see this document or I mean have you any independent recollection of having seen the document?

A. Yes. Davis would bring that in to me and I would approve its contents.

Q. Well, did Mr. Davis bring this in to you and you approved the contents? In other words, Mr. Kelly, I am not asking you what is the usual custom of your place but I am asking you if you have any independent recollection of this deal at all yourself.

A. Yes; I remember that.

Q. And when was the first time, if you recall, that you did see it? [154]

A. The same day that Mr. Aaron Ferer and Mr. Clements and Mr. Davis were in my office.

Q. And that was after the check had been delivered?

A. That was the same date.

Q. The same date? A. Yes.

(Testimony of Herbert Hudson Kelly.)

Q. Did you go with these gentlemen to Mr. Paradise's office on that date? A. No.

Q. You were present in Mr. Paradise's office when the formal contract was drawn, were you not?

A. No.

Q. You were not? A. No.

Q. Are you familiar with the so-called Anderson contract? A. Yes.

Q. And you knew what that provided for in the way of sale? A. Yes.

Q. Was that producing or refining equipment?

A. Producing.

Q. You knew these wells had never been produced by Richfield, didn't you? A. Yes.

Q. With the exception of these storage tanks that were mentioned as an exception in the contract, after the execution [155] of the Ferer contract, was there any producing equipment remaining in the field?

Mr. Paradise: With the exception of what?

Mr. Sturzenacker: With the exception of the six storage tanks and the pipelines, too.

A. I wouldn't know that.

Q. The other exceptions mentioned in the contract, such as the stills that had been sold to the O. C. Fields Company—those had previously been sold by your office?

A. Yes.

Q. And, with the exception of the superintendent's house and the cow barn? That wasn't part of the producing equipment, was it? A. No.

(Testimony of Herbert Hudson Kelly.)

Q. You have been on the property, haven't you?

A. Once.

Q. How long ago?

A. Oh, about March, 1941, I think.

Q. That was after this contract was in effect?

A. Correct.

Q. Was Mr. Ferer removing the stuff at that time?

A. He was.

Q. And had the other buildings been removed at that time? Do you recall? A. No.

Q. They were still there? [156] A. Yes.

Q. Was the pumphouse there?

A. It was still there to my knowledge.

Q. And the field office? A. Yes.

Q. It was still there? A. Yes.

Q. And you knew those were included in the contract with Mr. Ferer? A. Yes.

Q. Did you know at the time you executed the Ferer contract that there were certain boilers on the premises necessary to be used in the production of oil from those wells?

Mr. Paradise: I object to that as stating a fact not in evidence or assuming a fact not in evidence. There is no showing that the boilers were necessary for the production of oil.

Mr. Sturzenacker: I asked him if he knew.

The Court: A slight revision of the question, I think, will be proper.

Mr. Sturzenacker: I will withdraw the question.

(Testimony of Herbert Hudson Kelly.)

Q. Do you know of any boilers on the property?

A. Yes.

Q. Do you know what they were used for?

A. No. [157]

Q. You knew those boilers were included in this sale to Ferer? A. Yes.

Q. And the pipelines to the boilers?

A. Yes; if they were not in red on that print.

Q. Except those that were reserved as connecting the six storage tanks? A. Correct.

Mr. Sturzenacker: That is all.

Redirect Examination.

Q. By Mr. Paradise: Mr. Kelly, I inquired of you before if you knew of your own knowledge the matters that I read from your affidavit which concerned that, during the year before the execution of the contract, Richfield Oil Corporation had removed from the wells the derricks and the tubing and rods installed therein, which removal was deemed advisable because of the worn condition thereof, and I asked you if you knew that of your own knowledge and I believe you testified that you did not but that it was told to you. Is that correct?

A. Correct.

Q. Will you tell me where you got that information?

Mr. Sturzenacker: We object to that as not proper cross-examination or not proper redirect examination, I mean, and on the further ground that it has been asked and answered [158] and the witness has testified that he doesn't know of his own knowledge. What he heard from somebody else wouldn't assist the court in determining any of the issues in this case.

(Testimony of Herbert Hudson Kelly.)

Mr. Paradise: I understood that the plaintiff intended to renew its motion to strike that portion of the affidavit and, if that motion should be made, the basis of this witness' knowledge would be important.

Mr. Krasne: As I understood the court's ruling on the matters that related to this witness' intention, those motions were denied without prejudice to being renewed, but I understood the court had denied our motion to strike the matters that this witness learned from information and belief; that the court made some observations and apparently denied our motions.

Mr. Paradise: If the motions be renewed, I would like to inquire into the background of his knowledge.

Mr. Sturzenacker: We object to that primarily on the ground it is not redirect examination. We didn't touch on it on cross-examination.

The Court: Mr. Reporter, will you read the question now to which the objection has been raised?

(Question read by reporter.)

The Court: And I think you will have to give me what immediately precedes that question.

(Record read by reporter.)

The Court: So that any doubt on the matter may be cleared [159] up, at least so far as the court's ruling is concerned, let me point this out. I think it is important to know, or at least that it is relevant to know, what facts and conditions have been brought to the attention of a person executing a contract to ascertain what the intent

(Testimony of Herbert Hudson Kelly.)

of that person was because I think it is at least a matter of argument as to whether a witness, having certain facts in mind, did or did not intend to do a certain thing. A man who is ignorant of certain facts which would have a bearing on whether or not he meant to do a certain thing would hardly claim that his intention was influenced by those facts; but I think at least it is a fair inference to argue that a man who has knowledge by way of information given to him or facts which have a bearing on whether he should or should not enter into a certain transaction may cite those circumstances as helping to throw light on the truth of his assertion that he did or did not intend to do that which would be affected by those facts which had been brought to his notice. It is not conclusive but I think it is an arguable proposition.

Mr. Krasne: Of course, we want the record to show that our objection is made to all of this line of questioning on the ground that it would be hearsay insofar as we are concerned. In other words, it would be a magnificent way of setting up a lot of self-serving declarations.

The Court: Isn't this also true, however, that so far as the issue of reformation is concerned the defendant must [160] establish either a mutual mistake or a mistake on its part of which it may fairly be concluded the plaintiff had knowledge?

Mr. Krasne: That is correct, sir.

The Court: And, in order to establish whether or not a mistake was made, which includes the question as to

(Testimony of Herbert Hudson Kelly.)

what was the intent of one or both of the parties in entering into a particular contract, I think we are now permitting at least the participants in the transaction to state both what they intended and what facts had been brought to their notice at or prior to the time they entered into the transaction. I denied the motion to strike out those portions of Mr. Kelly's affidavit wherein he asserted his intention, without prejudice, however, to the plaintiff renewing the motion, at which time authorities I assume will be presented.

Mr. Sturzenacker: We renew this portion of the objection, may it please the court, as not proper redirect examination.

The Court: Denied; overruled.

Mr. Paradise: Will you read the question, please, Mr. Reporter?

(Question read by reporter.)

Mr. Paradise: May I strike that question?

Q. I will ask if the information to which you refer you had at the time you signed the contract in question, which is dated January 17, 1941. A. Yes. [161]

Q. Did you have that information prior to that time?

A. Yes.

Q. Will you state now the circumstances under which that knowledge came to your attention.

Mr. Sturzenacker: May it be considered the same objection goes to this entire line of questioning, your Honor?

(Testimony of Herbert Hudson Kelly.)

The Court: Yes.

Mr. Sturzenacker: Thank you.

Mr. Paradise: Perhaps that question is compound, if the court please, and I will withdraw it.

Q. The first part of your affidavit stated that you knew that, within a year prior to the execution of the contract with Aaron Ferer & Sons, Richfield Oil Corporation had removed the derricks and tubing and rods installed therein. Calling your attention to Defendant's Exhibit A, did you execute this contract?

A. Yes.

Q. Were you familiar at this time, that is to say, at the date of the contract, March 12, 1940, with the fact that the derricks, tubing and rods, were to be removed?

A. Yes.

Q. You knew that of your own knowledge?

A. Yes.

Q. Your affidavit states further that at that time, during that year, Richfield Oil Corporation removed from said wells the derricks and the tubing and rods installed [162] therein, which removal was deemed advisable because of the worn condition thereof. Speaking of the period prior to January 17, 1941, what were the circumstances under which you obtained knowledge of that statement or of that fact?

A. In August of 1940, a discussion of withdrawing tubing, sucker rods and pumps, was brought up in the general meeting which we have every Tuesday.

Q. Did you say in August of 1940? A. Yes.

Q. That was a period after the execution of this contract, that is to say, the contract with Mr. W. R. Anderson? A. Yes.

(Testimony of Herbert Hudson Kelly.)

Q. And who attended that meeting?

A. The president, Mr. Jones, and three vice-presidents, Mr. Morgan, Mr. A. M. Kelley, and there was Mr. Montgomery and Mr. Autrey and Mr. Dinkins, Mr. Gross and Mr. McKay and myself, Mr. Bonner and Mr. Ragland, and I think that is all. [163]

Q. Who are those persons, Mr. Kelly, generally?

A. Do you mean in general?

Q. What is their status with the company?

A. Mr. Jones was president.

Q. I didn't mean that you detail the status of each one. But is it correct that they are all heads of their respective departments? A. Correct.

Q. Are there many meetings of that sort?

A. There is one every week.

Q. Are they held regularly? A. Yes.

Q. What is considered at those meetings? What matters are brought up?

Mr. Sturzenacker: We object to that as incompetent, irrelevant and immaterial and not proper redirect examination.

The Court: It seems to me that is going rather broadly into the subject matter. The witness has stated that at least at one of these weekly conferences certain matters were mentioned, from which I take it it will be argued that the matters there mentioned were brought to the notice of the witness.

Mr. Paradise: I was going to prove one further thing, if the court please or perhaps it would be best brought out by the testimony rather than by a statement. [164]

The Court: Yes.

(Testimony of Herbert Hudson Kelly.)

Q. By Mr. Paradise: At those regular weekly meetings, Mr. Kelly, are the policies of the Corporation determined? A. To a large extent.

Q. What discussion took place as to the matter set forth in your affidavit, which I have read, at that conversation to which you referred?

A. Which one are you referring to now?

Q. The statement in your affidavit that during the year preceding the contract Richfield Oil Corporation removed the derricks and tubing and rods because of the worn condition of them. I believe you stated that was discussed at that meeting?

A. Yes. The production department, through Mr. Montgomery, brought the state of these particular wells to the attention of the management and Mr. Jones and recited that, the oil being of a corrosive nature, it had or possibly had corroded the tubing and the rods to the extent that it would be better to pull them at that time than to wait until a later date, where they might have great difficulty in pulling them.

Q. Was there a discussion at that meeting of the capping of the wells at the surface? A. No.

Q. Was there any discussion at that meeting concerning any future production of oil from the wells on the property? [165] A. That was mentioned.

Mr. Sturzenacker: Just a minute. We will object to that question as leading and suggestive and not proper redirect examination and not touched on in cross-examination.

The Court: Overruled.

Mr. Paradise: Was the question answered?

Mr. Sturzenacker: Yes; he answered it.

(Testimony of Herbert Hudson Kelly.)

Q. By Mr. Paradise: What was the discussion, Mr. Kelly, or what was said at that conversation?

Mr. Sturzenacker: The same objection, your Honor.

The Court: The same ruling.

A. Let's go back to the question.

Q. By Mr. Paradise: The question is this. Your affidavit states, on page 3, that at the time of the removal of such derricks, tubing and rods, the wells were not abandoned and the casing was left in such wells and the wells were each capped at the surface thereof in order that such wells might in the future be opened and re-entered for the production of oil therefrom. I asked you what discussion of that matter, if any, occurred at the meeting to which you have referred.

A. It was decided, as I have previously stated, to take these rods, tubing and so forth, out of the wells and to place them in a condition whereby they could be brought in in the future.

Q. Was that discussed at that meeting to which you have [166] referred?

A. At that meeting; yes.

Mr. Krasne: I move the witness' last answer be stricken on the ground that it is a conclusion. He said it was decided. I think that at least we are entitled to the benefit of knowing who said what at any such meeting.

The Court: Let that part of the answer go out. And tell us what you mean.

Q. By Mr. Paradise: Will you state the conversation, Mr. Kelly, and who participated in the conversation?

(Testimony of Herbert Hudson Kelly.)

A. Mr. Montgomery was the principal talker and it was mostly on his decision, approved by the balance of the management, that it be done and provision made for future control of the wells.

Mr. Krasne: I would like to know what Mr. Montgomery said and not this witness' conclusion when he is relating that conversation.

The Court: The best you can remember, what did he recommend or state?

A. He recommended that the tubing, the rods and the pumps, be withdrawn on the basis that they would probably be in such a weakened condition due to the corrosive nature of the oil that, if they did not withdraw them at that time, a greater expense might be incurred in the future. Does that answer the question?

Q. By Mr. Paradise: Did that meeting occur after this [167] contract was executed with Mr. Anderson or before?

Mr. Sturzenacker: Just a minute. We object to that as having been asked and answered.

The Court: It is not clear in my mind what the witness is referring to. I believe the witness testified that he signed the so-called Anderson contract. Is that right?

Mr. Paradise: That is correct, your Honor.

The Court: It is not clear in my mind, Mr. Kelly, to what pumps and rods and tubing you are referring. I believe you have told us that the name "H. H. Kelly" appearing as having signed this contract on behalf of the Richfield Oil Corporation, being Defendant's Exhibit A, is your signature? A. Correct.

Q. This contract, I notice, is dated the 12th of March, 1940. A. It is.

(Testimony of Herbert Hudson Kelly.)

Q. And in paragraph 4 of this contract it goes on to say, "The contractor agrees to perform the following work" and so forth, and included in that work we find the following among other items, "the pulling of pumps, rods and tubing, from all of the wells in which such equipment is present." Now, what tubing and rods are you talking about?

A. The same thing. It recites the location of the property and the wells referred to. The contract was given to the Petroleum Service Company or to a man named Anderson.

Q. What is not clear to me is this. This contract is [168] dated the 12th of March, 1940. Did I understand you to say this meeting took place several months after the contract was signed, namely, in August, 1940?

A. I was getting confused in the two things. The discussion relative to this contract was prior to the date of this contract and the discussion I have just referred to was relative to this contract.

Q. Was there a meeting in the fall of 1940, at which there was a discussion of the kind that you have been telling us about, where Mr. Montgomery recommended the removal of tubes and so forth?

A. Yes; there were discussions relative to this particular field many times but the particular dates I just don't recall.

The Court: I haven't any other questions.

Q. By Mr. Paradise: Do you recall any discussions at these executive meetings that you spoke of, Mr. Kelly, of the proposed sale of the tubing and rods to Anderson, which occurred prior to the date of the execution of that Anderson contract in March of 1940? Did you understand the question?

A. No; I don't.

(Testimony of Herbert Hudson Kelly.)

Q. Was the question of the removal of the tubing and rods and derricks from Casmalia discussed by Mr. Montgomery or by anyone else at any of the executive meetings which occurred before you signed that contract with Mr. Anderson? A. No. [169]

Q. At any of these executive meetings, was there any discussion concerning the production of oil from the wells at Casmalia? A. Yes.

Q. Did any of those meetings occur prior to January 17, 1941? A. Yes.

Q. On how many occasions was that matter mentioned at those executive meetings? Was there one meeting or was there more than one?

A. I recall one very distinctly. There may have been others.

Q. When did the one you state you recall occur?

A. In August, 1940.

Q. Is that the same meeting that you have previously testified to? A. Yes.

Mr. Paradise: I believe that is all, if the court please.

The Court: We will take a short recess.

(Short recess.)

Mr. Sturzenacker: Mr. Kelly, will you resume the stand?

Recross-Examination.

Q. By Mr. Sturzenacker: Mr. Kelly, you recited a conversation that took place in this meeting of August, 1940. Do you know whether or not at that time the rods and tubes [170] had been removed from the Casmalia wells? A. Yes.

(Testimony of Herbert Hudson Kelly.)

Q. They had been? A. Yes.

Q. Had the derricks been removed? A. Yes.

Q. Was any discussion had at that time about keeping the production equipment there for the purpose of producing those wells again? A. Yes.

Q. And what equipment did they decide on or was discussed that should remain there to produce those wells again?

A. The only equipment to remain, surface equipment, was that indicated on the map in red.

Q. Was that the time that the powers that be, if I may term them that way, authorized you to sell the rest of the equipment on the Casmalia lease?

A. In August; yes.

Q. And did they tell you or did anybody tell you what to except from the sale? A. Not myself personally.

Q. Was anything said at this meeting about reserving any pipelines? A. No.

Q. Do you know where this loading rack was in connection with the property? [171]

A. Just as I have seen it on the map.

Q. And that is all? A. Yes.

Q. You knew, however, that that loading rack was used for the loading of oil produced on the Casmalia property? A. No.

Q. Did you know anything about any boilers being on the property? A. Yes.

Q. And did you know that those were used in connection with the production of oil from that property?

A. No.

(Testimony of Herbert Hudson Kelly.)

Q. This tubing that was mentioned in your contract with Mr. Anderson, Plaintiff's Exhibit A, as a matter of fact, is casing, is it not? A. No.

Q. You signed this contract, didn't you?

A. Yes.

Q. I call your attention to page 4 and ask you about the first item on there, Well No. 1, under the word "Tubing", where there is a description of that, "4- $\frac{3}{4}$ " lapweld casing approx. 960'; Rods, $\frac{7}{8}$ ", approx. 950'; Pump, 4" x 7', Axelson," which means the kind of pump. That was made by the Axelson Company, is that right? That is the name of the pump? A. Yes. [172]

Q. And what does the description of the tubing say?

A. It says, lapweld casing but it is, in my opinion, wrong.

Q. Did you ever see it? A. No.

Q. Then, you don't know whether this casing—or whether it is what was known as tubing, do you?

A. I have never heard tubing described as casing.

Q. You had this contract prepared, didn't you?

A. I signed it.

Q. Wasn't this prepared by Richfield? A. Yes.

Q. It wasn't prepared by Mr. Anderson?

A. No.

Q. At this meeting was anything said by Mr. Montgomery or anybody else about the rods and tubing corroding? A. Which meeting is that?

Q. The August, 1940 meeting.

(Testimony of Herbert Hudson Kelly.)

A. No; that wasn't discussed. I thought I had straightened that out before. I got my dates mixed. The discussion relative to the tubing, sucker rods and pumps, was previous to signing, naturally, the Anderson contract. It had to be because there was no use discussing something that had already been done.

Q. As a matter of fact, didn't Mr. Montgomery say that the rods and tubes had been removed because it was easier to [173] remove them now than later on?

A. Correct.

Q. And that, because of the corrosive condition of the oil, those tubes and rods were being destroyed?

A. Correct.

Mr. Paradise: May I ask that the reporter read the last two questions and answers, please?

(Record read by reporter.)

Mr. Paradise: I should like to make an objection to those last two questions, if the court please, because it seems to me the questions are unintelligible. The questions are compound and ask both as to a past and future date at the same time.

The Court: You may clear it up.

Mr. Paradise: Yes; all right.

Q. By Mr. Sturzenacker: Was anything said at that meeting in August, 1940, at which time Mr. Montgomery said these rods and tubes had been removed, about the casing corroding?

A. Could I correct that?

Q. Yes.

A. I say and again repeat that in the August meeting that was not mentioned. That was mentioned in the meeting previous to the Anderson contract.

(Testimony of Herbert Hudson Kelly.)

Q. Wasn't there something said at the August meeting about this other production equipment already having been [174] removed?

A. Just in general. There was nothing specific as in the previous meeting. I am sorry but I did get my dates and contracts mixed.

Q. Then, it was at that time, when these other articles had been removed, they said, "Kelly, go ahead and sell the rest of the equipment", is that right?

A. Are you talking about the August meeting?

Q. Yes.

A. That is correct; and they then directed me to remove the surface equipment.

Q. The surface equipment?

A. Yes; that was relative to the Aaron Ferer deal.

Mr. Krasne: Mr. Reporter, will you read that last answer?

(Answer read by reporter.)

Q. By Mr. Sturzenacker: This was in August, 1940?

A. Yes.

Q. Had Mr. Ferer at that time submitted a bid?

A. No.

Q. What do you mean by that was in regard to the Aaron Ferer deal?

A. As it developed to be the Aaron Ferer deal.

Q. Did you ever communicate with Mr. Ferer or Mr. Clements or anybody connected with his institution or his company—

A. No. [175]

Q. —that you were authorized to sell the surface equipment on the Casmalia field?

A. Did I personally?

(Testimony of Herbert Hudson Kelly.)

Q. Yes.

A. I did not contact them personally.

Q. What did Mr. Montgomery say, if anything, at this meeting, going back to the meeting of August, 1940, about the casing in the wells, if anything?

A. I don't think he did say anything at that meeting. It had been previously mentioned—

Q. No; just at that meeting.

A. No; there was nothing discussed at that meeting.

Q. You had that in mind, that you were just going to sell the surface equipment when Mr. Davis showed you this memorandum which has been introduced as Plaintiff's Exhibit No. 1? A. Yes.

Q. Did you read it at that time? A. Yes.

Q. Did you notice what it says on the fourth line, "Everything will be sold to the above with the exception of the following"? A. Yes.

Q. Did you see anything on that that said anything about surface equipment?

A. It is all understood— [176]

Q. Just a minute. Is there anything on that document that says anything about surface equipment?

Mr. Paradise: That is argumentative.

A. I had better read it carefully to see. I don't see where the words "surface equipment" are written into this.

Q. By Mr. Sturzenacker: And in this letter or offer of Mr. Ferer, Plaintiff's Exhibit No. 2, and the acceptance, over your signature, Plaintiff's Exhibit No. 3, is there anything that says anything about surface equipment?

(Testimony of Herbert Hudson Kelly.)

The Court: I wonder if we are serving any worthwhile purpose by questions of the latter kind? I thought counsel all agreed—

Mr. Sturzenacker: I will withdraw that question, your Honor. I think you are right.

Q. When you read those documents and saw that they didn't mention surface equipment, did you communicate the fact that you were authorized only to sell surface equipment to Mr. Ferer or anybody connected with his concern? A. No.

Q. Mr. Kelly, did your executive staff have a meeting sometime in July or August of 1941?

A. They must have had.

Q. I am speaking of 1941, that is, after the Ferer contract was signed. And wasn't there a discussion at that time about reopening this field and trying to produce these wells? [177]

A. Not to my knowledge; not to my remembrance.

Q. These wells, so far as you know, never have been produced up to the present time?

A. Not to my knowledge, direct.

Q. Isn't it possible, Mr. Kelly, that the conversations that you are now relating relative to what Mr. Montgomery said occurred in 1941 and not in 1940?

A. No. That would be impossible.

Q. Hadn't it been decided within the year 1941 and after the Ferer contract was signed that the Richfield would attempt to produce these wells again?

A. I couldn't say.

(Testimony of Herbert Hudson Kelly.)

Q. You never heard it discussed by Richfield since the meeting of August, 1940?

A. Yes; I could say that it had been discussed.

Q. Since the signing of the Ferer contract?

A. Yes.

Q. And when was that?

A. It has been mentioned two or three times.

Q. It has been since the dispute over the question as to whether or not the Ferer contract included the casing in the wells or did not? A. Yes.

Q. And it wasn't discussed by you prior to that time? It wasn't discussed from the August meeting until the time when the dispute arose? [178]

A. I would say that it probably would be. It has been brought out on three or four occasions. The dates I couldn't say definitely.

Q. If I told you that this dispute arose about June, 1941, would you say that there was any discussion in any of the meetings prior to June, 1941 and after August, 1940 relative to producing these wells?

A. Yes.

Q. And about when was it? How long before that?

A. 30 days.

Q. Was it before or after you went up and visited on the property? A. After.

Q. And was some of the producing equipment that had been sold to Mr. Ferer still on the property when the matter was being discussed? A. I don't know that.

Q. Do you know whether the tanks were still there?

A. No.

(Testimony of Herbert Hudson Kelly.)

Q. Or the boilers? A. No.

Q. Or the pipeline? A. No.

Q. Isn't it a matter of fact that your company gave Mr. Ferer notice to hurry up with the dismantling of the producing and refining facilities on that property after you [179] visited up there in March? A. Yes.

Q. And after the question about reproducing the wells had been discussed in your board meetings? A. Yes.

Q. You didn't make any investigation yourself before you signed the Ferer contract as to what portion of the merchandise sold to Mr. Ferer could be used in producing these wells, did you? A. No.

Q. If a discussion took place in August, 1940 relative to reproducing this field, how did it happen that you were authorized to sell the producing equipment?

A. Because we were afraid that, if—or let me put it this way, that the equipment as it was offered for sale would not have been in good enough condition in our estimation to have produced a well.

Q. Who said it wasn't in good condition?

A. It was considered not to be by the production department.

Q. Who said that it wasn't in good condition?

A. Mr. Montgomery.

Q. Did he say anything about the half a mile pipeline running to the loading rack? A. No.

Q. Did he say that wasn't in good condition? [180]

A. Not to my recollection.

(Testimony of Herbert Hudson Kelly.)

Q. He did say he wanted six tanks reserved?

A. Correct.

Q. And did he say anything about the rest of the tanks on the property? A. No.

Q. Was there any difference between the condition of these six tanks and any other tank on the property?

A. I don't know.

Q. Did he say anything about the rest of the pipelines, the gathering lines, that went to the tanks and the boilers that heated the steam?

A. It was described as surface equipment and should be removed and sold.

Q. Even though they were talking about reopening the field? A. Correct.

Q. Was anything said about reserving the oil house or the blacksmith shop? A. No.

Q. Was that equipment in the blacksmith shop in bad shape, so that it could not be used if they were going to reproduce the field?

A. I don't know what equipment you refer to.

Q. Do you know anything about the logs of the well?

A. No. [181]

Q. Do you know, as a matter of fact, the logs of the wells were stored there? A. No.

Q. And turned over to Mr. Ferer? A. No.

Mr. Paradise: I object to that as assuming a fact not in evidence.

Mr. Sturzenacker: I asked him if he knew they were.

(Testimony of Herbert Hudson Kelly.)

The Court: You want to know whether or not the witness learned any such thing, is that right?

Mr. Sturzenacker: That is right.

Q. Did you know anything about the log books being turned over to Mr. Ferer? A. No.

Q. Did Mr. Montgomery say he wanted the log books preserved? A. Not to me.

Q. Did anybody say anything about saving the records of the wells and the log books? A. Not to me.

Q. Or the field office? A. Not to me.

Mr. Sturzenacker: That is all. [182]

Redirect Examination.

Mr. Paradise: I don't like to drag this out, if the court please, but I am afraid that there is some confusion as to the dates that has been brought out both on cross-examination and redirect examination and I believe it should be cleared up for the purpose of the record.

Q. Calling your attention, Mr. Kelly, to the contract with Mr. Anderson which is dated March 12, 1940, were there any discussions in the executive meetings that you have mentioned concerning the removal of the tubing and rods and derricks from those wells at meetings which occurred prior to the time that contract was signed?

A. Yes.

Q. When did those occur? Or I think I assumed there were more than one. Was it discussed at more than one meeting prior to the execution of that contract?

A. I don't think so. It was decided to remove them and my instructions were given to formulate the contract.

(Testimony of Herbert Hudson Kelly.)

Q. I believe you testified before as to some statements Mr. Montgomery had made as to the condition of the tubing and rods and derricks on the wells. At which of those executive meetings was that statement made by Mr. Montgomery?

A. At the meeting where the instruction was given to get the rods out.

Q. Was that prior to or after the execution of this contract? [183]

A. It was prior to it.

Q. Do you recall definitely of your own recollection when it was?

A. Either one or two weeks.

Q. One or two weeks what?

A. Previous.

Mr. Sturzenacker: May I have that last question and answer?

(Record read by reporter.)

Q. By Mr. Paradise: When I say this contract, I mean the contract of March 12, 1940, with Mr. Anderson.

A. Yes.

Q. Then you also referred to a meeting of this executive committee in August of 1940. At that meeting was there any discussion of this Anderson contract or of the removal of the tubing and rods under this contract?

A. No.

Q. What was discussed at that meeting?

A. The removal of the surface equipment.

Q. Was that approximately the time when you instructed Mr. Davis to prepare for the sale of salvage equipment at Casmalia?

A. Yes.

(Testimony of Herbert Hudson Kelly.)

Q. At either of those meetings, the March meeting or the August meeting, was there any discussion as to future production of oil from the wells on the property?

[184] A. Yes.

Mr. Krasne: I object to that as having been asked and answered.

Mr. Paradise: I realize it has been asked and answered but I was merely trying to clarify the record. We have talked of several meetings and several contracts.

The Court: Yes; he may answer again. A. Yes.

Q. By Mr. Paradise: Was it discussed at both of those meetings? A. Yes.

Q. Have you already stated the full substance of those conversations as to future productions? I will withdraw that question. At the August meeting was any mention made of the use of the equipment that was to be sold in connection with the future production of oil from those wells? A. No. Why would we sell it?

Q. At that meeting was the future production of oil from those wells discussed or considered? A. Yes.

The Court: May I interrupt to ask what meeting you are now talking about?

A. As I understand Mr. Paradise, this is the August meeting, 1940.

Q. By Mr. Paradise: Mr. Sturzenacker asked you to examine page 4 of this Anderson contract, which [185] is Defendant's Exhibit A, in which the word "casing" ap-

(Testimony of Herbert Hudson Kelly.)

pears in the inventory. I call your attention to a paragraph on page 4-a which states, "Contractor shall not remove from any wells any of the casing or liners now installed therein other than said tubing, rods and pumps above described." Did you have this provision of the contract in mind at the time you signed that contract?

A. Certainly.

Mr. Paradise: That is all.

Recross-Examination.

Q. By Mr. Sturzenacker: But you did sign a contract to allow them to remove numerous quantities of lapweld casing, did you not, which casing was used as tubing?

A. I would say yes to that.

Q. And do you know what kind of casing was used say as a protective string in the well?

A. By kind do you mean specification?

Q. Yes. A. Steel casing.

Q. Steel lapweld casing? A. I don't know.

Q. Do you know of your own knowledge at all what the casing in the wells was? A. No.

Mr. Sturzenacker: That is all. No further questions. [186]

Mr. Paradise: Did you want to cross-examine Mr. McGahan?

Mr. Sturzenacker: Yes.

The Court: Mr. McGahan may take the stand. [187]

FRANK I. McGAHAN,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Q. By the Clerk: What is your full name?

A. Frank I. McGahan.

Cross-Examination.

Mr. Sturzenacker: May it please the court, there are two affidavits of Mr. McGahan and one of them, I think, is an answer probably to an affidavit submitted by us and probably, therefore, is mostly in the negative, the main affidavit being one filed—

The Court: Do you mean the one verified February 18, 1942?

Mr. Sturzenacker: Yes; February 17 or 18, 1942.

The Court: You are referring to that one?

Mr. Sturzenacker: That is the one we are referring to; yes, your Honor.

The Court: Very well.

Mr. Sturzenacker: That is a 6-page affidavit, with some exhibits attached to it. It was verified as of the 17th. The other one is of the 18th.

The Court: Yes; I find that one. It is some five pages in length.

Mr. Sturzenacker: That is right. Calling the court's attention to page 5, line 20, beginning with the words "That [188] affiant," we move to strike the statement of the witness, "That affiant at all times intended that the equipment to be sold from the Casmalia property be limited to surface equipment. That affiant never intended

(Testimony of Frank I. McGahan.)

that the equipment to be sold from the Casmalia property include the casing in any of the oil wells on the property. That affiant never intended that any of the oil wells upon the property be abandoned," on the grounds that the statement is a conclusion strictly of the witness; that he, himself, had no authority to consummate any deal and could not have sold anything had he wanted to and it is merely a self-serving declaration and is not evidentiary in its nature and should be stricken.

The Court: I think we must make the same ruling here as we did to similar language in the other affidavits; that the motion is denied without prejudice to your renewing the same, with supporting authorities.

Q. By Mr. Sturzenacker: Mr. McGahan, when was the first time that you received any instructions to sell any property at Casmalia?

A. It was about, I should say, two or three days before September 21st, which was the first trip I made to Casmalia.

Q. Was that the first time you had ever been to Casmalia?

A. No; it was not the first time I had ever been to Casmalia but it was the first time I had ever been there in connection with this case. [189]

Q. Do you know whether or not this equipment on the Casmalia lease had been previously offered to other people by Mr. Davis before you were notified about it?

A. No; I don't.

(Testimony of Frank I. McGahan.)

Q. And, when you went on the property, did you make a list or an inventory of it?

A. I had an equipment map which the company usually has on leases of that nature and, as I made frequent trips after that date, after the 21st of September, I checked the equipment on this map and compiled notes in my notebook.

Q. When you went up there to visit the property, what equipment did you check and what map did you have?

A. I had a map which I understand is the same as the one attached to the contract.

Q. Did that show any oil wells on the property?

A. Yes, sir.

Q. So when you went up there in September you knew there were some oil wells on the property?

A. Oh, yes.

Q. You were instructed, according to your affidavit, to sell the surface equipment? A. That is right.

Q. And was there any surface producing equipment there? A. Surface producing equipment?

Q. Yes.

A. Well, much of the equipment that was there could be [190] called producing equipment.

Q. Were there some boilers? A. Yes.

Q. You were never there when the wells were produced, were you? A. No.

Q. Do you know what those boilers were used for, if they were used in the production of oil from that property?

(Testimony of Frank I. McGahan.)

A. They could have been used for several purposes, pumping from the wells or furnishing steam for the lines which were used to heat the oil for transportation. They also could have been used for a certain purpose in the refinery.

Q. You have been in the oil industry for some years?

A. Yes, sir.

Q. And you are familiar somewhat with the transportation of oil through pipe lines? A. Yes.

Q. And are you familiar with the type of oil that was produced at that Casmalia field?

A. It was a very heavy grade of oil.

Q. Do you know its gravity?

A. I couldn't say for certain but I believe it was about 9.

Q. And that is pretty heavy oil, isn't it?

A. Pretty heavy oil. [191]

Q. Will that oil flow readily through a pipeline?

A. Well, it depends on the temperature. On a hot day, it would flow and on a cold day perhaps no.

Q. For the purpose of transporting the oil, it was necessary to have steam injected in the line, is that right?

A. In most cases; yes.

Q. Did you examine those gathering lines? I believe that is what you call pipelines that go from wells to various storage tanks, gathering lines? A. Yes, sir.

Q. Did you examine those gathering lines to see whether they were so occupied?

A. It was impossible to do that without opening the lines up and I did not open up any of the lines.

(Testimony of Frank I. McGahan.)

Q. Did any of these tanks have any oil in them?

A. Yes, sir; most of the tanks had oil in them.

Q. And were the tanks in good condition?

A. Not all the tanks. The steel tanks were in good condition but the galvanized tanks, that is, the corrugated flat tanks, were most of them in very bad condition.

Q. How many steel tanks were there on the property?

A. I should say there were about 10 or possibly 12 steel tanks.

Q. And how many galvanized tanks?

A. I couldn't tell you. There was a large number but, while I made a record, I don't remember exactly how many [192] there were.

Q. You remember the contract that was finally executed, do you? A. I don't know too much about it.

Q. Well, you remember that certain tanks were accepted? A. Yes, sir.

Q. Do you remember what tanks those were?

A. If I remember correctly, two 55,000 and one 37,000 and one 30,000 and I believe one smaller one, 7,500 or 10,000.

Q. Were those all steel tanks?

A. Those were steel tanks; yes, sir.

Q. But some of the steel tanks were sold under this contract? A. Some of the steel tanks were sold; yes.

Q. And all of the galvanized tanks?

A. Yes, sir; except one galvanized tank which I believe was used for water storage up on top of the hill.

(Testimony of Frank I. McGahan.)

Q. And all of the pipelines leading from the wells to these respective tanks, excepting those pipelines between the tanks that were reserved, were sold, is that right? I am speaking of oil lines.

A. Maybe I had better have that question again.

Q. I will withdraw the question. Some of the pipelines were sold under this contract?

A. Some of the pipelines were sold under the contract; yes. [193]

Q. Were those pipelines on the surface of the ground?

A. Not necessarily. Some of the lines were under the surface at one point and exposed on the surface at another. Some of them were perhaps entirely under the surface from beginning to end.

Q. And some of them were entirely underground from beginning to end?

A. I would say it is quite possible some of them were.

Q. How deep were those lines buried?

A. That I can't say. They may have been buried from perhaps two feet to eight or ten feet.

Q. Do you consider pipe that is buried eight or ten feet as surface equipment? A. Yes, sir.

Q. You were never present on the premises when Mr. Ferer or Mr. Clements or anybody representing them was there, were you?

A. Not when Mr. Ferer was there. I met Mr. Clements there accidentally, that is, I mean not by appointment, one afternoon.

(Testimony of Frank I. McGahan.)

Q. Was that after the contract was signed or before?

A. I am not entirely positive. I am not sure but I believe it was after the contract was signed.

Q. Were they at that time wrecking the equipment?

A. Yes. Well, I would like to qualify that, please. I saw Mr. Clements out there twice, once before there was any [194] work started and once while they were working on the lease.

Q. But your best impression is now that it was after the contract had been signed?

A. I am positive the second time I saw him was after the contract was signed.

Q. Did you ever examine any of the gathering lines at all to ascertain their condition as to whether or not they might be used for production of oil from that field?

A. Yes; I looked over the lines a number of times.

Q. And what was their condition?

A. The condition varied. In some cases the condition was bad and in other cases it was fair.

Q. Were any of the pipes in such a condition that they might be used if the field was going to be produced?

A. Yes.

Q. Are you familiar with the loading line that went down to the loading rack?

A. Yes, sir.

Q. That was about a half a mile long, wasn't it?

A. I believe it was; yes.

Q. What sized pipe?

A. 6-inch.

(Testimony of Frank I. McGahan.)

Q. In what condition was that?

A. I couldn't tell you for sure because that line I never walked over. It was, as you say, a half a mile or I believe it was a little longer than that. I believe most of [195] it was underground.

Q. That pipeline was used to transport oil from the storage tanks to a loading rack?

A. To a railroad loading rack; yes.

Q. And from there it was loaded into oil cars?

A. It had been while the lease was in operation.

Q. There were no pipelines in the field to which the oil could be connected and transported by a regular commercial pipeline, were there?

A. I believe the only outlet from the lease was by these storage tanks, which was this 6-inch line.

Q. Do you mean the loading rack line?

A. The loading rack line.

Q. Did anybody ever tell you, connected with Richfield, that, in August and September, 1940, they were going to reopen the field and produce oil from those wells?

A. No; nobody ever told me.

Q. Did you, after September, offer this equipment for sale to various people?

A. I did not offer it for sale. That was not my job. I simply contacted and told people about it and took them up there and showed it to them.

Q. In other words, you did things which in your mind were necessary for the purpose of allowing people to place a bid with the Richfield for the purchase of that property?

A. That is right. [196]

(Testimony of Frank I. McGahan.)

Q. Had anybody from Richfield told you that they were going to reopen this field and produce oil from it, would you have—I will withdraw that question. You are in charge of the salvage department of Richfield, are you not?

A. Yes, sir.

Q. It is your job, among other things, to dispose of surplus and useless goods?

A. That is right.

Q. And, also, to salvage secondhand materials that can be used or are usable by your company in other places?

A. Yes, sir.

Q. You also have charge of the stores, don't you?

A. Yes, sir.

Q. If anybody had told you from the Richfield Oil Company that they were going to reproduce the field and open it up for production, would you have sold the loading line from the storage tanks to the loading rack?

A. Yes, sir.

Q. How would you then have removed your oil from the field?

A. They very likely would have removed the oil by truck inasmuch as most of it is being moved in that way in these days and also because of certain problems in getting the oil to the railroad.

Q. What were those problems?

A. The gravity of the oil. [197]

Q. In other words, it had to be heated?

A. Yes, sir; that is right.

Q. Was there any drop between the storage tanks and the loading place?

A. There was; yes, sir.

(Testimony of Frank I. McGahan.)

Q. Wasn't that sufficient to carry the oil once heated?

A. No, sir, because the 6-inch line had a 2-inch steam line inside of it.

Q. And that existed all the way down, did it?

A. To the best of my knowledge.

Q. How about the gathering lines? Were any of those lines in good enough condition to be used if the wells were going to be opened?

A. There is a possibility that some of them, after reconditioning and examination, would have been good enough to use; but it was my thought, when I offered that material for sale, that the cost of examining and reconditioning this pipe would be probably about the same as it would cost us if we would come back in there to install new pipe.

Q. Did you ever actually go on the portion of the property where the wells are located? A. Yes, sir.

Q. That is a considerable distance, is it not, or some of the wells are a considerable distance from the refinery equipment? A. Yes; they were. [198]

Q. Did anybody tell you what was to be exempted from this sale? A. Yes, sir.

Q. What was to be exempted?

A. The oil wells, the six steel tanks, the dehydrators located on the lease, which did not belong to us, and the superintendent's house and I believe the cow shed and the superintendent's garage and a 2-inch gas line from the superintendent's house to one or more of the wells.

(Testimony of Frank I. McGahan.)

Q. Who told you that the oil wells were to be emptied?

A. I believe it was either Mr. Kelly or Mr. Davis in a conversation in their office just prior to September 21st.

Q. You don't recall who told you that?

A. No; I don't.

Q. Did they tell you—or you knew that the rods and the casing in the wells that had been used for tubing had been pulled out, didn't you? A. I knew that.

Q. And you knew the derricks had been taken down?

A. Yes, sir.

Q. And you knew that the pits had been filled?

A. No; I can't say as I knew that. My knowledge of what had happened had been more from my own observation.

Q. Did you observe when you were up there after this meeting in September that the cellars of the various wells had been filled? [199] A. No; I didn't.

Q. Was Mr. Anderson still working there when you went up?

A. I really don't know whether he was still working there on the 21st of September or not.

Q. What was the condition of the boilers that had been used in the production of oil there?

A. The condition of the boilers was that for ordinary modern practice they were obsolete.

Q. In your affidavit you say that you are acquainted with a Mr. David Zeidenfeld. A. Yes, sir.

(Testimony of Frank I. McGahan.)

Q. How long have you know Mr. Zeidenfeld?

A. Well, I believe that I have known Mr. Zeidenfeld for possibly 7 or 8 years.

Q. And, during August or September, did you talk to Mr. Zeidenfeld about this Casmalia property?

A. Yes, sir.

Q. About when did you talk to him?

A. I can't say for certain. I believe that I talked to him possibly as early as the 1st of August.

Q. Is there anything particular about the conversation by which you can tell us approximately the date and who was present? Do you have any independent recollection, I mean, of a certain conversation that you had with him?

A. I am afraid not. I was seeing Mr. Zeidenfeld every [200] two or three days at that time in connection with other things that were being bought from the company and it would be rather difficult for me to say on which occasion I mentioned this, although I believe it was around the first of August somewhere.

Q. What was he buying from your company?

A. All kinds of obsolete scrap materials.

Q. Were those big purchases or small purchases?

A. They might run from 10 or 15 tons up to perhaps 100 or 200 tons.

Q. Did you ever sell him 100 or 200 tons?

A. I believe that the company sold to the company which he represented amounts which would probably be that large.

Q. Do you mean at one time? A. Yes.

(Testimony of Frank I. McGahan.)

Q. When is the first time that you have any specific recollection of having talked to Mr. Zeidenfeld about selling the equipment at Casmalia?

A. I still will repeat, to the best of my knowledge, that it must have been around the 1st of August, 1940.

Q. Do you ever remember having any particular conversation that you can at this time give us the date of and where it took place and the parties present?

A. Yes; I can tell you about one particular occasion which took place possibly in November or maybe in December, in which I had compiled my notations of what we had on the [201] lease to be sold and which I asked Mr. Zeidenfeld to come into my office and look at.

Q. And that was, you say, during the month of November or December?

A. I believe it was about that time; yes.

Q. Can you give us the date any closer?

A. I can't without making a guess.

Q. I don't want you to do that.

A. I worked on that list over a considerable period of time and when it was finished I believe was about the end of November.

Q. Who else was present? Do you recall?

A. I don't believe anybody else was present.

Q. Where did the conversation take place?

A. In my office in Long Beach.

Q. What was said at that time by you and Mr. Zeidenfeld?

A. Well, generally, I showed Mr. Zeidenfeld—

(Testimony of Frank I. McGahan.)

Q. First of all, will you please tell us what was said and, as you go through, tell us what you showed him if you showed him anything?

A. I said, "I have completed my little compilation here of the material on the lease up there and have it here so that I can tell you approximately how many boilers and how many pumps and how many engines and how many tanks and so on and how much pipe there is." And I said, "I have it here page by page, with the quantity and a weight estimate." And [202] then I said, "I also have totalled up the entire weight estimate and have arrived at a figure of 1,500 tons, divided as you see it on these several sheets."

Mr. Sturzenacker: May I have the last portion of that answer, Mr. Reporter?

A. I said, "divided as you see it on these several sheets."

Q. At that time was anything said about Mr. Zeidenfeld ever having or not having seen the property?

A. I asked Mr. Zeidenfeld the first time I mentioned the pending sale to go up there with me sometime and look at it.

Q. When you talked to him this time in November or December, did you know that he had or had not seen the property?

A. I knew that he had not.

Q. In your affidavit you say this conversation took place the last of November or the first of December, 1940. Would you say that is correct?

A. The conversation with Zeidenfeld?

Q. Yes. A. Yes; I would say that is correct.

(Testimony of Frank I. McGahan.)

Q. What else did you tell Mr. Zeidenfeld at this conversation? A. What else did I tell him?

Q. Yes. [203]

A. Well, to the best of my knowledge, that about covers it.

Q. Did you tell him how many tanks there were on the property? A. Yes, sir.

Q. Did you tell him about any tanks being excluded?

A. Yes, sir.

Q. What tanks did you tell him were going to be excluded?

A. I told him the six tanks excluded in the contract were the ones that were going to be excluded.

Q. What else did you tell him was going to be excluded?

A. I told Mr. Zeidenfeld of the tanks, the superintendent's house and the garage and the oil wells, of course, and I believe at the time we are talking about that I knew everything that was to be excluded and I told him everything that was to be excluded.

Q. Did you know anything about the gas line being excluded?

A. The gas line, I think, was something that came up just before the deal was made as far as I know.

Q. At that time you talked to Mr. Zeidenfeld you didn't know anything about the gas line being excluded?

A. If I knew about it, I don't remember mentioning it to him.

Q. Did you tell Mr. Zeidenfeld there were any oil wells on the property? [204]

A. I couldn't say that I did; no.

(Testimony of Frank I. McGahan.)

Q. You referred to this property for sale as the Casmalia refinery, didn't you? A. No.

Q. How did you refer to it?

A. The Soladino lease.

Q. I guess that is the proper name for it, isn't it?

A. Generally we refer to it, roughly, as Casmalia.

Q. Did you refer to it as the refinery?

A. I referred to the fact that there was a refinery on the site, but I never tried to describe the entire lease as a refinery; no.

Q. Did you refer to it as the sale of the producing and refining equipment on that property?

A. It is quite likely that I referred to it in that manner.

Q. Did you measure up these various pipelines?

A. No, sir.

Q. Where did you get your information as to the various numbers of fittings and so forth?

A. From the equipment map in the past inventories that had been taken.

Q. Those inventories were not taken by you?

A. No, sir.

Q. Or by the Richfield Company?

A. Yes; they were taken by people working for Richfield. [205]

Q. Do you know how old those inventories were?

A. I believe that the last inventory taken on that lease was in 1930.

Q. Do you know of anything having been sold off of the property in the meantime?

A. Do you mean prior to the sale to Mr. Ferer?

(Testimony of Frank I. McGahan.)

Q. That is right.

A. Yes; we had sold a couple of or several stills to the O. C. Fields Company and we had sold some miscellaneous brick and pipe to the Mid Coast Oil Company and I believe that one or more dwelling houses on the lease had been sold to individuals.

Q. Anything else? [206]

A. Well, let me see. There were stills, pipe and miscellaneous fittings to the Mid Coast Oil Company and there was some fire brick sold. I believe that was to the Mid Coast, although I am not certain about that. And then the houses. That is all I have any knowledge of.

Q. That was merchandise that had not yet been removed from the premises. Had you sold anything that had been removed from the premises?

A. Do you mean had I sold anything which at the time of the taking of these bids was gone from the property?

Q. Yes.

A. Yes; I believe that there were a couple of stills sold.

Q. Do you know that the rods and the casing in the wells that had been used as tubing had been removed and sold?

A. I have no knowledge of that other than the knowledge I have of the Anderson deal.

Q. You knew in the Anderson deal Mr. Anderson got the tubing and the rods? A. That is right.

Q. And you knew the derricks had been removed?

A. Yes.

(Testimony of Frank I. McGahan.)

Q. Did you ever tell Mr. Zeidenfeld that the casing on the property or the wells on the property were to be excluded from this sale?

A. I could not say that I did; no, sir. [207]

Q. Well, would you say that you did not tell him that?

A. No; I wouldn't say that I did not because I don't remember whether I did or not.

Q. As a matter of fact, were the casing or the wells on the property ever mentioned in any conversation between you and Mr. Zeidenfeld?

A. To the best of my knowledge, they were not mentioned.

Q. You were present, were you not, when the final contract or the terms of the final contract were gone over in Mr. Paradise's office? A. Yes, sir.

Q. That was the first time you had ever met Mr. Ferer, wasn't it?

A. No. I had met Mr. Ferer, I believe, once or twice before that.

Q. Oh, yes. You met him at your place of business some time previous to 1940? A. Yes, sir.

Q. And you had met Mr. Clements before?

A. Yes.

Q. And you were present at this conversation in Mr. Paradise's office? A. Yes, sir.

Q. Was anything said at that time about excluding the casing or the wells from the sale of the property at Casmalia?

A. I can't say I remember anything specifically [208] mentioned about the wells in that meeting other than in connection with the gas line, which I remember being mentioned as being an exception which was to be made.

(Testimony of Frank I. McGahan.)

Q. That was the gas line to the superintendent's house?

A. From the superintendent's house to one or more of the wells.

Q. You knew the wells were on the property?

A. Yes, sir.

Q. You knew there was casing in the wells, too, didn't you?

A. Yes, sir.

Q. And you knew that those casings and wells so far as your company was concerned were to be excluded from the sale?

A. Yes, sir.

Q. But you didn't say anything about it?

A. No, sir. I wasn't writing the contract.

Q. Did you ever see a copy of the contract before it was signed?

A. No, sir.

Q. I understand it was spoken about in Mr. Paradise's office and then you all went away before the contract was completed, is that right?

A. I don't know when the contract was completed. After that meeting, I left the office and I couldn't say when it was completed.

Q. At the time that the meeting was held, didn't Mr. [209] Paradise hand each person present a copy of the contract?

A. I believe that I had a copy there in the office; yes.

Q. And do you remember looking it over?

A. Yes.

Q. Did you see the excluded items on there?

A. I did.

Q. You didn't see any casing excluded, did you?

A. No, sir.

(Testimony of Frank I. McGahan.)

Q. Or any wells? A. No, sir.

Q. Did you say anything about not selling the wells or the casing or not mentioning them in the exclusion?

A. I did not.

Q. Were there any changes made in the contract after it was passed around to the various people in your presence?

A. I recall one change, and that was, I believe, the words "lumber and metal" were added.

Q. And at whose request was that change made?

A. At Mr. Ferer's request.

Q. As to these various pages of inventory which you have attached to your affidavit sworn to by you, is that the usual form in which you keep your inventory?

A. That is not an inventory.

Q. Did you tell Mr. Zeidenfeld that the estimate that you had of tonnage might or might not be correct because Richfield had only old records of the installations on this [210] property? A. Yes; I told him that.

Q. And you told him he would have to go up or have his company go up and look over the property for themselves to determine what was there for them to bid on, didn't you? A. No, sir.

Q. Did you tell him to bid on the rough figures that you gave him?

A. No, sir. I asked him to go up there with me.

Q. Did he go up with you? A. No, sir.

Q. Mr. McGahan, are you a petroleum engineer?

A. No, sir.

Q. Had you ever had any experience in the abandoning of oil wells? A. No, sir.

(Testimony of Frank I. McGahan.)

Q. You state in your affidavit that none of the casing can be removed from an oil well without abandonment of such well in accordance with the requirements of the Division of Oil and Gas of the State of California. Do you know that to be a fact? A. That is my belief.

Q. Can't casing be removed from an oil well without abandoning it? A. Not all of the casing; no.

Q. Can any casing be removed from a well without [211] abandoning it?

A. Well, it all depends on the type of work that you are going to do.

Q. As a matter of fact, casing can be removed under some circumstances without the abandonment of the well, can't it?

A. Some of the casing in the well; not all of it.

Q. Were you familiar with the casing record in these wells? A. No, sir.

Q. Did you ever see the log books of the wells?

A. No, sir.

Q. Do you know where they were?

A. I believe that the records are in the home office at Los Angeles to the best of my knowledge.

Q. Do you know where the log books are?

A. Some of the old drillers' copies of the log books were in one of the old buildings on the lease.

Q. And that was sold along with the rest of the stuff?

A. That is correct.

The Court: It looks like we will have to resume this on Wednesday morning at 10:00 o'clock.

(Testimony of Frank I. McGahan.)

(Whereupon an adjournment was taken until Wednesday, September 9, 1942, at 10:00 o'clock a.m.) [212]

Los Angeles, Calif., Wednesday, September 9, 1942,
10:00 A. M.

(Appearances as last noted.)

The Court: I would like to ask counsel in the case in which we have been engaged in trial, in the first place, how much time do you think will be required to complete the examination of the witness now on the stand?

Mr. Sturzenacker: We have only four or five more questions to ask on cross examination; probably about 10 minutes on cross examination.

Mr. Paradise: And not over 10 or 15 minutes on re-direct examination.

The Court: Then, I believe we were to hear from the witness Zeidenfeld?

Mr. Sturzenacker: That is correct.

The Court: And I believe you had one witness, Mr. Montgomery, that you wanted to put on?

Mr. Paradise: Yes.

The Court: Would you say that the interrogation of the witness Zeidenfeld would likely take at least a half a day?

Mr. Sturzenacker: I presume so, as we are starting from the beginning. But it will depend on how far Mr. Paradise expects to go.

Mr. Paradise: It depends on the nature of the court's ruling as to the use of his deposition. I am not sure whether it was the court's ruling that that deposition

(Testimony of Frank I. McGahan.)

be [213] disregarded, in which case he would have to be examined originally. It would save a great deal of time if his deposition could follow the court's present ruling.

The Court: I think we finally concluded, to use a slang phrase, that we would start from scratch with the witness Zeidenfeld.

Mr. Sturzenacker: Your Honor, I would say it would take two hours.

The Court: I am making these inquiries so as to determine what to say to counsel in the cases that are trailing. I think that gives us the information that we require.

(Hearings on criminal matters.)

(Whereupon an adjournment was taken until the following day, Thursday, September 10, 1942, at 10:00 o'clock a. m.) [214]

Los Angeles, Calif., Thursday, September 10, 1942, 10:00 A. M.

(Appearances at last noted.)

The Court: I think Mr. McGahan was on the stand.

Mr. Paradise: Before proceedings with the witness, your Honor, is it appropriate at this time for the court to make an order, under Rule 80, concerning the costs of the record? That is to say, a portion of the case may be postponed and the reporter has called my attention to the fact that it is within the discretion of the court as to the taxing of costs for a transcript to be prepared in the meantime. I don't mean to suggest that the costs should be taxed at this time but that an order be made concerning them in connection with the preparation of

(Testimony of Frank I. McGahan.)

an original transcript. I will offer a stipulation that both parties share the costs of that transcript equally and the amount to be taxed as costs. Is that satisfactory?

Mr. Krasne: I am not entirely sure of how these charges work. I should like to be enlightened. In other words, I presume we, of course, could order a copy of these proceedings. Is there a charge for an original and a charge for each of the two copies? Is that the customary arrangement?

Mr. Paradise: I understand it is merely the original, the court's copy, that will be taxed as costs.

The Court: In other words, it is, naturally, optional with counsel as to whether they wish an extra copy but it is [215] the original with which we are primarily concerned.

Mr. Krasne: That should be prepared for the court, I presume.

The Court: And both sides initially share in the cost but ultimately to be made part of the costs of the case.

Mr. Krasne: That is agreeable. [216]

FRANK I. McGAHAN

recalled.

Cross Examination

resumed.

Q. By Mr. Sturzenacker: Mr. McGahan, at the time you were present at the meeting in Mr. Paradise's office, was this map which has been offered in evidence and attached to the contract in evidence around there at that time?

A. I really can't say. I don't remember whether it was or not.

(Testimony of Frank I. McGahan.)

Q. Did you ever see these red marks on that map in Mr. Paradise's office?

A. Well, not being sure whether I saw the map or not, I couldn't say.

Q. You, yourself, didn't make any of those exclusions or the red marks on the map? A. No, sir.

Q. Did you, after receiving these instructions from Mr. Davis about selling the salvage equipment at Casmalia, ever ask anybody or invite anybody to bid on it?

A. Yes, sir.

Q. And who did you invite to bid?

A. Well, I invited a lot of different people, some of whom I can't just exactly remember. I remember the Union Oil Well Supply Company for one, the Atlantic Supply Company as another one and the Western Oil Field Supply Company and I believe also that there were a number of the salvage companies here in Los Angeles. [217]

Q. Did you send out any written invitations to bid or were they all oral? A. They were all oral.

Q. Did you furnish any of them any inventory?

A. No, sir.

Q. Did you receive any bids for all of the equipment or some of the equipment?

Mr. Paradise: I object to that question on the same ground that I objected to the offered introduction of the other bids.

(Testimony of Frank I. McGahan.)

The Court: I think that is a preliminary question that might or might not be open to that objection. You may answer.

A. I did not receive any bids.

Q. By Mr. Sturzenacker: A few moments ago I asked you if you saw this map at the meeting in Mr. Paradise's office. Did I understand by your answer that you didn't see the map at all prior to the drawing of the contract?

A. I don't remember of seeing the particular map. However, the map may have been there.

Q. After this conference in the office, did you ever see the map?

A. Are you referring to the map with the markings on it?

Q. Yes. A. No, sir.

Mr. Sturzenacker: That is what I understood you to say [218] but I wasn't quite sure. That is all of the cross examination.

Redirect Examination

Q. By Mr. Paradise: Mr. McGahan, what is your status with Richfield Oil Corporation?

A. Supervisor of storehouses.

Q. Do your duties have anything to do with either the drilling of oil wells or the production of oil wells?

A. No, sir.

Q. Do your duties have anything to do with the operation of oil fields where oil is being produced by Richfield? A. No, sir.

(Testimony of Frank I. McGahan.)

Q. Have you had any experience in either the drilling of oil wells or in the production of oil from oil wells?

A. I haven't.

Q. Or in the operation of oil fields for the production of oil?

A. No, sir.

Q. In connection with the sale by Richfield of salvage equipment, does that come under your jurisdiction?

A. Not under my jurisdiction; no.

Q. Is that part of your duties?

A. It is part of my duties to assist the purchasing department in showing the material to prospective bidders.

Q. As a part of your duties in salvaging equipment, do [219] you make the determination of what equipment is to be sold and what equipment is not to be sold?

A. No, sir.

Q. From whom do you obtain instructions in that respect?

A. From the management.

Q. From which departments?

A. The exploitation department.

Q. Pardon me?

A. The exploitation department.

Q. Who is the head of that department?

A. Mr. Montgomery.

Q. From whom did you receive your instructions with respect to the sale of equipment at Casmalia?

A. My preliminary instructions were from Mr. Montgomery.

Q. Did you receive any instructions from the purchasing department which you mentioned?

A. I received detailed instructions; yes.

(Testimony of Frank I. McGahan.)

Q. The determination, then, of what equipment was to be sold was contained in those instructions?

A. Yes, sir.

Q. What were your instructions in respect to this sale of the salvage equipment?

A. My instructions were to take prospective bidders to Casmalia and show them the surface equipment which we had for sale.

Q. Was a description given to you of the type of [220] equipment to be sold at Casmalia?

A. Yes; a general description.

Q. What was the description?

A. The description was given as the surface equipment less certain things which were to be retained by the company.

Q. What were those things that were to be retained? You say surface equipment less certain things?

A. Yes, sir.

Q. What were the exclusions?

A. The exclusions were certain tanks, dehydrators, certain pipelines and some stills, that is, still bottoms and some stills.

Q. Were the items which were excluded surface equipment?

A. Yes, sir.

Q. Part of the surface equipment? Is that correct?

A. Part of the surface equipment.

(Testimony of Frank I. McGahan.)

Q. At any time during the negotiations with Aaron Ferer & Sons concerning this sale, did you have any knowledge of whether any of the tanks, boilers or the pipeline or the refinery, would be needed by the production department in connection with future production of oil from that property?

A. No; that matter was never taken up with me.

Q. Did you have any knowledge of that matter?

A. No particular knowledge; no.

Q. In answer to one of Mr. Sturzenacker's questions, I believe you stated that the pipelines which were located [221] upon the property could have been used for the production of oil from such wells. Did you so state?

A. Yes, sir.

Q. Did you know at the time these negotiations were carried on how long those pipelines had been in there?

A. To the best of my knowledge, they had been in there at least 15 years.

Q. Would the condition of those pipelines make any difference in whether or not they could be used for production purposes on or after January, 1941?

A. Oh, yes.

Mr. Krasne: I object on the ground the question is incompetent, irrelevant and immaterial.

The Court: The answer may go out.

Mr. Krasne: I think this witness has already testified he wasn't familiar with production.

The Court: He has told us he is not qualified to express an opinion on this subject matter.

(Testimony of Frank I. McGahan.)

Q. By Mr. Paradise: I believe you testified that some of the tanks were sold as a part of this sale and, also, that certain tanks were excluded. Will you describe the size of the tanks which were excluded and the size of the tanks which were sold?

A. As I remember the tanks which were excluded, there were two 55,000-barrel tanks, one approximately 37,000-barrel, a 10,000-barrel and I think a 7,000 or 7,500-barrel tank. I [222] am not just sure of the size of the last two tanks.

Q. What were the sizes of the tanks that were included in the sale?

A. The tanks that were included ranged all the way from 20- to 30-barrel up to 5,000 barrels.

Q. Where were those tanks included in the sale located?

A. They were located all over the lease.

Q. Were they in what is known as a tank battery, the tanks that were sold?

A. No; I don't think any of them were in a battery. They were more or less distributed around the lease, I should say, singly or possibly in pairs.

Q. I believe you also testified on cross examination that some of the tanks contained oil, that is to say, some of the tanks that were included in the sale. Do you know how much oil was contained in the tanks?

A. No; I couldn't say how much was in there.

Q. Were the tanks full of oil?

A. No; they were not full.

(Testimony of Frank I. McGahan.)

Q. Were there anything other than tank bottoms of oil in the tanks?

A. Tank bottoms is about what it amounted to; yes.

Q. What do you refer to as tank bottoms?

A. It is the sediment in the bottom of the tank.

Q. I believe you also testified on your examination by Mr. Sturzenacker that in your conversations with Mr. Ferer [223] and Mr. Clements and Mr. Zeidenfeld you did not mention to them that the casing in the wells was to be excluded or that the wells themselves were to be excluded, is that correct? A. Yes, sir.

Q. What did you tell Mr. Ferer was to be sold?

A. The surface equipment less certain exceptions.

Q. Do you recall when you told him that?

A. I told him that in our first conversation.

Q. When did that occur?

A. My first conversation with Mr. Zeidenfeld, I believe, was some time—

Q. No; Mr. Ferer.

A. I had a conversation with Mr. Ferer which I believe was over the telephone and that would have been, as near as I can place it, some time between September and the first part of December. I don't remember just when.

Q. What did you tell Mr. Ferer at that time?

A. I told Mr. Ferer that we were going to sell all of the surface equipment, excluding certain items which I wasn't positive about at that time but could tell him later.

(Testimony of Frank I. McGahan.)

Q. Did you tell Mr. Ferer anything concerning an examination of the property?

A. Yes; I invited Mr. Ferer to go up there with me and look it over.

Q. Did Mr. Ferer do so? A. No, sir. [224]

Q. What did you tell Mr. Clements was to be sold as a part of this transaction?

A. The same thing; the surface equipment less such items as the company wanted to retain.

Q. Was that in one conversation or in more than one conversation with Mr. Clements?

A. I believe I had two or three conversations with Mr. Clements, and I couldn't say that I told him in the second and third conversations again that that was the case but I did in the first conversation.

Q. Do you recall where that conversation took place?

A. No; I don't exactly.

Q. Can you fix the approximate limits of when it took place?

A. To the best of my knowledge, it was around the first of November, 1940.

Q. What did you tell Mr. Zeidenfeld was to be sold as a part of this transaction?

A. I told Mr. Zeidenfeld that we were to sell the surface equipment less such items as the company wished to retain.

Q. Did you tell Mr. Zeidenfeld what those items were that the company wished to retain?

A. Yes; I did.

(Testimony of Frank I. McGahan.)

Q. When did that conversation take place?

A. That conversation took place sometime in August or [225] September, 1940.

Q. Was that *you* first conversation with Mr. Zeidenfeld?
A. I believe it was.

Q. Did you have a subsequent conversation with Mr. Zeidenfeld concerning this matter?
A. Yes, sir.

Q. When did that occur?

A. I had a conversation later with Mr. Zeidenfeld sometime towards the end of November or possibly the first part of December.

Q. Going back for a moment to your conversation with Mr. Clements, did you discuss with Mr. Clements anything concerning an examination of the property?

A. I don't recollect that I did.

Q. Did Mr. Clements ask you for an inventory of the property at that time?
A. No, sir.

Q. Did he ask you anything concerning the items of property?

A. I can't say for sure. I would think that probably he did.

The Court: May I have the last question?

(Record read by reporter.)

Q. By Mr. Paradise: Do you recall what he asked you?
A. No; I don't.

Q. Do you recall what you answered him? [226]

A. No.

(Testimony of Frank I. McGahan.)

Q. Did you tell Mr. Clements anything about the extent of your information as to the nature of the items that were to be sold?

A. I told Mr. Clements at the time I talked to him that I hadn't completed going over the lease yet and that I wasn't exactly sure what the company might wish to retain of the surface equipment and what they might want to sell.

Q. Is that as of the date of that conversation?

A. Yes; the first conversation I had with him.

Q. Calling your attention to your conversation, your second conversation, with Mr. Zeidenfeld, and I have forgotten the date which you fixed when that occurred, that you stated that that occurred, can you state approximately when your second conversation was?

A. Yes; it was either at the end of November or the first of December.

Q. At that time did you have any more information concerning the nature of the equipment to be sold at Casmalia?

A. Yes; I did.

Q. In what form did you have that information?

A. I had it in the form of notes in my notebook.

Q. I hand you 10 pages of pencil notes, Mr. McGahan, and ask you if those are the notes to which you refer.

A. They are.

Mr. Paradise: May these be marked as Defendant's Exhibit [227] 1 for identification?

The Court: Let's see; they will be Defendant's Exhibit B, I guess it is, for identification.

(Testimony of Frank I. McGahan.)

The Clerk: That is right.

Mr. Paradise: This is the same exhibit, if the court please, I think, that is attached as Defendant's Exhibit 1 to Mr. Zeidenfeld's deposition. There is a photostat in there that is attached to Mr. Zeidenfeld's deposition.

The Court: Since we are not using his deposition, that numbering may be dispensed with.

Mr. Paradise: Oh, yes; that is correct. I am sorry.

Q. By Mr. Paradise: Were these pages shown to Mr. Zeidenfeld at that occasion? A. They were.

Q. Will you describe the manner in which they were shown to Mr. Zeidenfeld and what the conversations were concerning them?

A. I told Mr. Zeidenfeld that I had now completed more or less of a record of what was up there and what we were going to sell and asked him if he would like to come in my office and go over them with me and he said that he would. And so I opened up the book and we went through these various pages and discussed the items on each one.

Q. Did you discuss each page with Mr. Zeidenfeld?

A. Yes, sir.

Q. Did you show each page to Mr. Zeidenfeld? [228]

A. Yes, sir.

Q. What conversation occurred concerning the tonnage of equipment?

A. Mr. Zeidenfeld told me that his company was interested largely in tonnage more than they were in particular items and wanted to know and was interested in what the approximate total tonnage of this material would amount to.

(Testimony of Frank I. McGahan.)

Q. Did you tell him what that tonnage would be?

A. Yes, sir.

Q. What did you tell him?

A. I told him that my estimate was 1,500 tons.

Q. Was that an overall estimate?

A. That was an overall estimate of all the material which was to be sold.

Q. Is that estimate of 1,500 tons shown in those record? A. Yes, sir.

Q. How was that form of estimate of 1,500 tons broken down?

A. It is broken down under various headings for the various types of equipment which were included in the estimate.

Q. Is there a breakdown between production equipment and refining equipment? A. Yes, sir.

Q. What is the breakdown in that respect?

A. The breakdown in that respect is an indication in [229] the company records to show what portion of this material was located on the refinery side and what portion was located on the production side.

Q. Did you tell him the portion of the 1,500 tons that was your estimate of the pipelines on the property?

A. Yes, sir.

Q. What was that estimate?

A. Approximately 920 tons.

Q. Did you tell that to Mr. Zeidenfeld?

A. Yes, sir.

(Testimony of Frank I. McGahan.)

Q. Does one of these pages concern the pipe on the property? A. Yes, sir.

Q. Which page is that?

A. This is the page here.

Q. Does it have a number?

A. It has one but I can't make it out.

Q. It looks to me as if it is marked page 7. Is that correct?

A. I will put my glasses on to look at it. That is right.

Q. Is the pipe that is shown on that page divided between production equipment and refining equipment?

A. Yes, sir.

Q. Does that page also give the sizes and weights and lengths of the pipe? [230]

A. Yes, sir; it gives the sizes and weights and the footage.

Q. And how many feet of pipe are contained under the production division of the page? A. 153,537 feet.

Q. And how much on the refining end?

A. 60,265.

Mr. Paradise: I offer these as Defendant's Exhibit B, if the court please, that is to say, these pages referred to.

The Court: They consist of how many pages?

Mr. Paradise: Consisting of 10 pages of written notes.

The Court: They may be admitted and marked Defendant's Exhibit B.

DEFENDANT'S EXHIBIT NO. "B".

WT. ESTIMATES

Boilers —	222	Tons
Pumps —	37	—
Pipe —	920	—
Valves }	40	—
Fittings. }		—
Engines }	8	—
Motors }		—
	1227	Tons

[In circle]: 1500 Tons

Total Estimate

Not included in the 1227 Tons

Condenser boxes	50
Mixing tanks	16
Preheaters }	6
Heat exchangers }	
Vapor tower	10
Transformers	2 84
Fire carts	
Corr ir. tanks	
Houses—buildings	

Allowing for misc. items not accounted for under heading at top of this page such as misc pipe fittings, valves, iron and steel scrap, structural steel etc.

(Defendant's Exhibit No. B)

CASMALIA

Tentative Sales List of Prod. & Refinery
Material & Equipment—Soladino Lease

Prod. Dept.	Refinery
Boilers	Boilers
Buildings	Buildings
Pipe—Fittings	Condenser Boxes
Valves	Cooling Towers
Engines—Motors	Heat Exchangers
Pumps	Engines—Motors
	Pumps
Tanks—Corr.	
Steel	Pipe & Fittings
	Retorts
	Stills
	Tanks—Corr.
	Steel
	Dehydrators?

(Defendant's Exhibit No. B)

PRODUCTION — REFINERY

CASMALIA

Refinery
Yellow

BOILERS

BUILDINGS

✓20537	70	H P	}	Boil. Hse
✓20538	60			PR 20984
✓20539	70			Refinery
✓20540	60			Boiler Pt. #6

✓	692	70
✓	693	70
✓	694	90
✓	695	70
✓	696	70
✓	697	70
✓	698	70
✓	699	70

}	Boiler
	Plt #3

✓	700	40
✓	701	40
✓	702	40
✓	703	40
✓	704	40
✓	705	40
✓	706	40
✓	707	40

}	Boiler
	Plt. 36

✓	708	40
✓	709	40
✓	710	40
✓	711	40
✓	712	40
✓	713	40
✓	714	40

}	Boiler
	Plt #5

✓	716	70
✓	717	70
✓	718	70
✓	718	70

}	Boiler
	Plt 4

✓	720	70
✓	721	70
✓	722	70
✓	723	70
✓	724	70
✓	724	70
✓	725	40

}	Boiler
	Plt #1

Load Rk.

16—40	H. P.
17—70	"
1—90	"
1—90	"

✓
2 ✓

Pr. 1479	Garage
1494	Dwell
1495	Barn
1496	Oil House
1497	Whse-Office
1498	Blksmith-M Shop
1499	Boiler Hse
17301	✓ ✓
17302	✓ ✓
17303	✓ ✓
17312	Garage
17316	Dwell 3rd
17317	✓ 2nd
17318	✓ 1st
17324	Grain Hse
17325	Boiler ✓
20978	Pump Hse
20979	Elec. Work Sh.
20980	Carp. Shop
20981	Pump House
20982	Switch ✓
20983	Cent. Hse
20984	Boiler Hse
20986	Pump ✓
20987	Comp ✓
20988	Fire Cart Hse
20989	Laboratory
(In Circle):	
17322	Pump Hse
17323	✓ ✓
	Not Sold—Water Wks
	29

—BOILERS—

18—40's	-	81 Tons
2—60's		14 ✓
17—70's		119 ✓
1—90		8

38.....222 Tons

36—

715 40 H P	Near Plt 4
	On Hill
719 40 H P	On Hill
	Near Cow Shed

38 TOTAL

(Defendant's Exhibit No. B)

Production

Refinery

Centrifuge

22403 100 CC—4-Arm Braun ×

Fire Extinguishers

22403 100 CC—4-Arm-Braun ×

4284 2½ ✓ Chicago Whse ×

4285 2½ ✓ ✓ ✓

4286 2½ ✓ ✓ Supt. Hse

4296 2½ ✓ ✓ Whse

Mixers

2—7'x26' Riveted Steel ×

Oil and Distillate

Refinery

✓

Condensor Boxes✓ 1—28'x35'x6' Deep Condensor Box
W/2"-3"-4" Coils

✓

✓ 1—40'x42'x6" Deep—Ditto
W/2"x4"-6" Coils

✓

✓ 1—10'x44'x6' Deep—Ditto
W/3" Coils

✓

1—3'x18'x2' Deep—Ditto
W/2" Coils

✓

Preheaters

1—8'5"x23'x12'8" ×

Heat Exchangers ×

1—3'6"x18'6" H.M. 3'-4' Outlets

1—2'2"x10'3" ✓ 3' Outlets

✓

3—18"x8'2" Braun W/60 Press Tubes

(Defendant's Exhibit No. B)

Heaters X

1—6"x42" W/2-4" & 4-3" Collars

✓

Tower—Vapor X

1—6'x40' "HM" Riveted

✓

Tower Cooling

1—8'x42'x8' High

Redwood ✓

Prod.

Refinery

Engines X

6x8 Troy Ver. Steam

20445

6x8 ✓ ✓ ✓

20446

Sold ✓ 4x8 ✓ ✓ ✓

20447

23766 5 H.P. Fuller & Johnson—

Not Sold—W.N

24024 10½x12 Ajax

24043 9½x10

24044 8x10 Ames-Steam

24044

Wt. 4½ Tons

Elec Motors X

5383 10 H.P. 50 Cyc. 3 PH 220 v

Not Sold

5392 50 ✓ 60 ✓ 3 PH

Not Sold

26559 25 ✓ 60 ✓ 3 PH 440 v

20 ✓ 60 3 220 v

26560

¼ ✓ 60 Sin. 220 v

26561

15 60 3 PH 220 v

26562

Wt. 3 Tons

(Defendant's Exhibit No. B)

Compressors

PR

22456	3½x4 Belt Dr. Union	×	
	6x7 Ins. Rand		51528 22457

Transformers ×

29908	10 KVA	230/460—60	Cyl.	1970152
29909	10 KVA	✓	✓ ✓ ✓	85204
29910	15 KVA	13-200/12000		1785046
29911	15 KVA	✓	✓	1785043

Steam Traps

28856	¾" Strong-Carlisle	×	28856
	¾" ✓		Refinery
			✓
	½" Crane Tilt Trap-Type		326

Regulators

10526	3" Gas—Wilgus	×
10527	3" ✓ ✓	
25352	3" ✓ Flg. Type—Wilgus	

Separator

7353 10"x42" Volz—Oil Cap 3-Gal.

Prod

Refinery

Fire Carts ×

2-200 Gal Foamite	✓
Horse Drawn	

(Defendant's Exhibit No. B)

CASMALIA

PRODUCTION

REFINERY

Size	Wt. Lbs.	Wt. Braces			Wt. Total			Wt. Pipe			Wt. Tube			Wt. Total			Grand Total		
		Pipe	Tons	Etc.	Pipe	Tons	Etc.	Pipe	Tons	Etc.	Pipe	Tons	Etc.	Pipe	Tons	Etc.	Pipe	Tons	Etc.
2"	3.75	65956	124	2006	4	67962	128	15000	28	6660	12.5	21660	40.5	89622	168.5				
3"	7.70	43641	168	1216	5	44857	173	10000	38.5	4300	16.5	14300	55	59157	228.				
4"	11.	12439	68	576	3	13015	71	10000	55	8475	47	18475	102	31490	173.				
6	19.45	19403	189	1025	10	20428	199	5000	49	750	7	5750	56	26178	255				
8"	25.55	5007	64	1538	20	6545	84	80	1			80	1	6625	85				
10	32.75	445	7			445	7							445	7				
13	57.	113	1			113	1							113	1				
18	81.	172	2.5			172	2.5							172	2.5				
		147176	623	6361	42	153537	665	40080	171	20185	83	60265	254	213802	920				

All footage & weights are approx.

Following pipe included above is

located outside lease:

2"—4154'

3"—177'

4"—283'

6"—4240'

PIPE

(Defendant's Exhibit No. B)

PUMPS

Production	Refinery
5954 550 Gal Gas Pump	
6311 5¼x3½x5 F.M.	
6312 ✓ ✓ ✓ ✓	
6316 ✓ ✓ ✓ Worth	
6317 ✓ ✓ ✓ ✓	
6319 3x2x4 F.M.	
6320 5¼x3½x5 ✓	
6321 ✓ ✓ ✓	
6323 3x2x4	Sold
6342 3x6 Gear	Not Sold—W.N.
27312 4' Cent.	
27313 10 H.P. W. Well—Lut.	Do Not Sell
27314 4 H.P. ✓ ✓ ✓	Do Not Sell
27315 Rot. Belt Dr.	
4" Rot. Force	27316
4" ✓ ✓	27317
Kinney Rot.	27318
✓ ✓	27319
27526 5½x3½x5 F.M.	
27599 7x4½x10 ✓	
27600 10x6x12 Blake-Kno	
27601 7x4½x10 F.M.	
27602 8x6x10 Smith	
27603 10x6x12 Worth.	
27604 ✓ ✓ ✓ OWS	
27605 ✓ ✓ ✓ Gardner	

(Defendant's Exhibit No. B)

27606	10x7x12 F.M.	
27607	6x4x 6	✓
27608	7x10 Ver. Trip. Dean	Not Sold
27609	8x 8	✓ ✓ ✓
	12x7x12 Smith	27610
	10x6x12 Worth	27611
	7x4½x10 F.M.	27612
	10x6x12 Ows	27613
	9x8½x10 Worth.	27614
	10x5¾x12 Gum. Bus	27615
	6x4x6 F.M.	27616
	7x4½x10	✓ 27617
	7x4½x10	✓ 27618
	7x4½x10	✓ 27619
	6x4x6	✓ 27620
	5¼x3½x5	✓ 27621
	6x4x6 Worth	27622
	7x4½x10 F.M.	27623
	4½x3x4	✓ Sold 27624
	4½x3x4	✓ Sold 27625
	5¼x3½x5	✓ 27626
	5¼x3½x5	✓ 27627
	3x2x3	✓ × 27628
27629	7x4½x10	✓
27630	10x6x12 Worth	
27631	10x6x12	✓

Total Wt. Approx.

37 Tons

50 Pumps

(Defendant's Exhibit No. B)

T A N K S

PROD	REF	PROD	REF	PROD	REF	PROD	REF
8467	100 Cor		585		29245		1000
68	"		50		246		275
69	"		2000		247		277
73	1250		500		248		278
75	100		532		249		279
76	1000		5000		250		282
77	"		145		251		284
78	100		150		252		320
(8474	500	W. Plt)	100		253		500 (Water)
29219	500	"	2150		254		
220	1000	"	100		255		
224	350	"	100		256		
225	100	"	2500		257		
	655		2500		258		
*54880		29229	500		259		
*54877		*29230	500		260		
		*29231	500		261		
29232	2146		500		262		
233	2147		100		263		
234	1096		29264				
235	1095		265				
236	237		266				
237	100		Galv				
	*5000		"				
	*10000		(Steel				
	*30000		Steel				
	*37254		29271				
	1242		242				
	500		243				
	500		244				

[Printer's note: * Indicates Red Ink.]

Tanks shown in *Red not to
be sold

TOTAL TANKS

65
*6

To be sold

59

Prod 32
Ref 27Flat Galv }
" " }
" " }
" " }
Water Tanks

(Defendant's Exhibit No. B)

VALVES AND FITTINGS

<u>Production</u>		<u>Refinery</u>
	Fittings ×	
25 Tons		15 Tons
		[In circle] :
		40 Tons
	Valves ×	
35 Tons		20 Tons
	No Fittings Itemized on Production Side	
	25 Tons Is Rough Estimate	
		[In circle] :
60 Tons		35 Tons
	My Estimate of Total Valves and Fittings	
	Approx. 95 Tons	
		95 Tons

[Stamped]: Deft's Ex. "B". Filed Sep. 10, 1942.

(Testimony of Frank I. McGahan.)

Q. By Mr. Paradise: In answer to one of Mr. Sturzenacker's questions, Mr. McGahan, I believe you testified that under some circumstances a casing could be removed from a well without abandonment of the well.

A. Yes, sir.

Q. Do you know whether there are any statutory requirements governing the removal of casing from an oil well?

Mr. Sturzenacker: I object to that as calling for a conclusion of the witness.

The Court: I don't know why we should ask this witness that question. Can't you gentlemen agree as to what either the statutory or the regulatory requirements are? [231]

Mr. Paradise: Yes. This is by way of rebuttal, if the court please. The witness was asked on previous examination if casing could be removed from a well without abandonment and I believe he stated under some circumstances, and I wanted to bring out what those circumstances were.

The Court: I take it that the fair meaning of his answer is that it has nothing to do with what the law or the regulations would permit but, rather, that it is based on some mechanical knowledge.

Mr. Paradise: Rather than that, if the court please, what legal restrictions, or I mean what statutory requirements, must be followed before any casing could be removed.

The Court: Will that be determined by this witness' answer?

(Testimony of Frank I. McGahan.)

Mr. Paradise: No; it would not, your Honor. It is just a matter of clearing up the matter of the cross examination.

The Court: I take it that you gentlemen should be able to agree as to what the statutory law, or the regulations issued pursuant thereto, has to say on that subject.

Q. By Mr. Paradise: Are you familiar with the requirements of the Division of Oil and Gas, that is to say, what the requirements of the Division of Oil and Gas, of the State of California, are concerning any removal of casing from a well in California?

Mr. Sturzenacker: We object to that as incompetent, irrelevant and immaterial and not proper redirect examination [232] and it calls for a conclusion of the witness.

The Court: I am not sure that I get the purport of your objection. Upon what theory—

Mr. Sturzenacker: I will withdraw the objection.

The Court: I was going to ask do you claim to be entitled to the answer the witness gave in response to your inquiry and not have at least the witness indicate whether he claims to know the subject?

A. May I have that again?

Mr. Paradise: Will you read the question, Mr. Reporter?

(Question read by reporter.)

A. I don't know what the requirements are; no.

Q. By Mr. Paradise: Have you ever inquired of the Division of Oil and Gas concerning its requirements in connection with the removal of casing or the abandonment of a well?

A. No, sir.

Mr. Paradise: That is all.

(Testimony of Frank I. McGahan.)

Recross Examination

Q. By Mr. Sturzenacker: As a matter of fact, you are merely the storekeeper, charged with administering the stores or a store at Long Beach and to dispose of certain useless and surplus equipment, are you not?

A. No; I am not at Long Beach any longer.

Q. You were at this time? [233] A. Yes.

Q. Mr. McGahan, you said that these tanks were distributed about the field, were they?

A. The tanks which we intended to sell were generally distributed around the lease; yes.

Q. Did you investigate or look these tanks over?

A. Yes; I looked at the tanks.

Q. Did you ascertain whether any of them had any oil in them or not?

A. I ascertained that most of them did have some sediment in them; yes, sir.

Q. Did you ascertain whether any of them were full of oil?

A. To the best of my knowledge and in going over the lease, I didn't find any of these tanks, which were included in the sale, which were full of oil.

Q. Can you state to this court at the present time that you examined all of the tanks in the field that were sold?

A. No; I couldn't state that because there were so many tanks or many tanks that I didn't look at, that is, not the tanks to be retained, but the tanks that were, obviously, obsolete and worn out I didn't look at.

(Testimony of Frank I. McGahan.)

Q. So you don't know whether they were filled with oil or not?

A. I don't believe, Mr. Sturzenacker, that any of them were filled with oil. [234]

Q. I wish you would answer my question. At the present time can you state to this court that any of those tanks were not filled with oil?

A. The ones that I didn't look at, no; I couldn't state that they were not filled with oil.

Q. Do you know where that oil had been produced from? A. No; I don't.

Q. Weren't these tanks that were sold adjacent to or connected with the various wells in the field?

A. Most of them were. However, I believe there were a couple of tanks which were several miles from the field.

Q. Most of these tanks were gathering tanks for gathering lines from various wells that went into these filled tanks?

A. I wouldn't say that most of them were gathering tanks; no. Some of them could have been gathering tanks.

Q. Were the smaller ones gathering tanks or what do you call the small tanks?

A. A small tank would probably be referred to as a receiving tank or possibly a shipping tank. That type of tank might possibly be located close to a well.

Q. Some of the tanks were right in the same locality as the tanks that were reserved, were they not?

A. They might have been near, yes, inasmuch as they were pretty well scattered about the lease.

(Testimony of Frank I. McGahan.)

Q. You never took anybody up to the field to show them [235] the property? A. Oh, yes.

Q. Did you ever take Mr. Ferer up?

A. No, sir.

Q. When was this first conversation that you had with Mr. Ferer? I think you have told on redirect examination it was in September or December. What did you say about that?

A. I don't believe I was sure just when that conversation took place, Mr. Sturzenacker. As far as I know, it was sometime between the last of September and the first of November or the last of November, but I am not sure just when it was.

Q. And that was over the telephone?

A. To the best of my memory, it was.

Q. Did Mr. Ferer tell you at that time he had been up to see the property?

A. No; I have no recollection of that.

Q. He merely asked you what the company wasn't going to sell, didn't he?

A. No. As I recall, he asked me what the company was going to sell.

Q. And what did you tell him?

A. I told him we were going to sell the surface equipment from the lease less certain items which were going to be retained.

Q. You told him the company was going to sell the [236] surface equipment less certain things they were reserving? A. Yes.

(Testimony of Frank I. McGahan.)

Q. When was this first conversation you had with Mr. Clements?

A. That I don't remember. I believe, to the best of my remembrance, it was somewhere around the first of November.

Q. And what did you tell him the company was going to sell?

A. I told him that the company was going to sell the surface equipment less certain items which we would retain.

Q. You knew Mr. Clements was quite familiar with the field, did you not?

A. I didn't know whether he had any acquaintance with the field or not.

Q. The first time you talked to Mr. Zeidenfeld about selling this equipment, what did you tell him?

A. I told Mr. Zeidenfeld we were going to sell the surface equipment less certain items which the company would retain.

Q. Do you remember anything else that you told Mr. Zeidenfeld at that first conversation besides the fact you were going to sell the surface equipment?

A. No; I don't remember any particular thing, although we had a discussion of the matter and I might have told him a number of things. I can't recall any particular item.

Q. Do you remember anything else that you told Mr. [237] Clements at this first conversation except that you were going to sell the surface equipment less certain excluded items?

(Testimony of Frank I. McGahan.)

A. I don't remember. I can say I probably called his attention to the fact that there was also probably refinery equipment there.

Q. And can you repeat any more of the conversation that you had with Mr. Clements?

A. I am afraid I can't; no.

Q. Now, in this telephonic conversation you had with Mr. Ferer, can you tell us anything you said to Mr. Ferer except that you were selling the surface equipment?

A. I cannot repeat anything. All I can remember is the general conversation.

Q. You were present at these conferences in Mr. Paradise's office and were shown a copy of this contract which at the same time was submitted to Mr. Ferer, was it not?

Mr. Paradise: I think that assumes facts not in evidence, if the court please. There is no evidence that a contract was submitted at that time.

Mr. Sturzenacker: The affidavit so states, that he was present.

Mr. Paradise: That he was present at a meeting.

Mr. Sturzenacker: All right.

Q. By Mr. Sturzenacker: You were present at this [238] meeting in Mr. Paradise's office?

A. Yes.

Q. And was a contract submitted at that time?

A. I cannot say when the contract was submitted to Mr. Ferer.

(Testimony of Frank I. McGahan.)

Q. Was there any discussion at that time as to what equipment was to be sold up there?

A. There was a discussion relative to certain items which were to be sold; yes.

Q. Didn't Mr. Paradise pass out copies of the contract to everybody in the room?

A. It is my recollection that he did.

Q. Do you recall reading that copy of the contract?

A. I don't recall reading it but I recall having it in my hand and going over it with the rest of them.

Q. Did you hear the first part of that contract read, "All of the producing and refining equipment on the Casmalia lease"? Did you hear that read?

A. I probably did.

Q. At that time did you hear anybody there say that the company was only selling the surface equipment?

A. No, sir; I did not.

Q. It isn't your contention, is it, that this Defendant's Exhibit B, these 10 pages of pencil notations, are a complete inventory of the equipment on the Casmalia lease, is it?

A. No. It is my records of the material on the Casmalia [239] lease which we were going to offer for sale. However, on those notations are certain exceptions which I made after I was informed that those particular items were to be held.

Q. Did you ever show these notations or this inventory to Mr. Davis?

A. I don't know as I did.

(Testimony of Frank I. McGahan.)

Q. Or Mr. Kelly?

A. No; I can say for sure that I didn't show them to Mr. Kelly.

Q. Where did you get your estimate of 1,500 tons of salvage?

A. By taking the weights of the pipe and the boilers and the various pieces of equipment and totaling it all up.

Q. I notice that on page 1, the first page, you have items of boilers, pumps, pipe, valves, fittings, engines and motors, and you have them totaling 1,227 tons?

A. Yes.

Q. That was your estimate, was it not?

A. That was the estimate of that particular material; yes.

Q. What did you add to that to get 1,500 tons?

A. I believe the notations on there show that there were certain valves and fittings which had to be considered in a miscellaneous manner. And I might add, Mr. Sturzenacker, that in arriving at the 1,500 tons my notes there do not include any pipe under two inches and, because I knew that [240] there was lots of pipe up there under that size which I wasn't listing, I allowed for that pipe and for valves and fittings which were not itemized.

Q. Do you know, as a matter of fact, that the items which you have computed here do not total in excess of 900 tons?

A. The pipe alone, according to my estimate, was something over 900 tons.

Q. You have been up on the property recently, haven't you?

A. No, sir.

(Testimony of Frank I. McGahan.)

Q. You have been up there since Mr. Ferer has removed the equipment from the property with the exception of the oil wells or the casing out of the wells?

A. No; I have not.

Mr. Paradise: May I ask the reporter to read, I think it was, three questions back, where Mr. Sturzenacker asked if the tonnage did not amount to 900 tons? I didn't quite get that.

(Record read by reporter.)

Q. By Mr. Sturzenacker: Where did you get the figures for your pipelines?

A. Well, those figures shown there are the accepted weight for standard pipe.

Q. Did you measure these pipes?

A. No, sir. I took them from a map. [241]

Q. You don't know whether those pipes were there or not, do you?

A. No. I believe I explained that to Mr. Zeidenfeld when I showed him that estimate.

Q. So, when you showed Mr. Zeidenfeld that estimate, you now recall that you told him you were not sure that everything that was on your estimate was actually there?

A. I recall that I brought that to his attention and I also pointed out to him that there was no pipe on that estimate under two inches and that the pipe that was listed could be subject to some possible change that had been made and not recorded on the map, that is, more pipe could have been placed in the system or some pipe could have been taken out.

(Testimony of Frank I. McGahan.)

Q. How many times were you on this property for the purpose of preparing this estimate?

A. Oh, I should say about four or five times.

Q. And you never went to all of the wells, though?

A. Yes; I went to all of the wells.

Q. All of the wells and all the tanks?

A. I can't say that I went to all of the tanks; no.

Q. I notice on these various pages you have the word "sold" after certain of these items. Were those sold after you made up this estimate or before?

A. The reason for that was that in working from this equipment map I first put down everything on there and then [242] made that notation after certain items which were sold before Mr. Ferer bought the balance of it.

Q. Were those words on there at the time you showed these to Mr. Zeidenfeld?

A. I believe they were, although I can't be positive.

Q. Did you consider this a complete inventory as far as your knowledge of the field and the information given you by your maps indicated?

A. No; that is not a complete inventory.

Mr. Sturzenacker: That is all.

Redirect Examination

Q. By Mr. Paradise: In what sense was that not a complete inventory? I am still referring to Defendant's Exhibit B.

A. In the sense that a complete inventory would have, necessarily, had itemized everything on the lease, which it was impossible for me to do inasmuch as a portion of

(Testimony of Frank I. McGahan.)

the pipe was underground and the valves and fittings were concerned and there was no pipe under two inches taken into consideration. The descriptive matter was not complete as it would have been in an inventory.

The Court: May I interrupt here just a minute? Will you read that answer, Mr. Reporter?

(Answer read by reporter.)

Q. By Mr. Paradise: When you mentioned, Mr. McGahan, [243] the pipe underground, were you referring to the casing in the wells or to the pipelines?

A. The pipelines.

Q. Does that also include the casing in the wells?

A. No, sir.

Q. On Exhibit B, page 7 shows an itemization of pipe. Will you explain what that pipe consisted of?

A. All of the pipe on this page 7 is line pipe.

Q. What do you mean by line pipe?

A. I mean pipe that is used for the transportation of oil or steam or gas or water.

Q. Is that pipelines? A. That is pipelines.

Q. Does that page include any of the casing that was installed in the oil wells? A. No, sir.

Q. What did you tell Mr. Zeidenfeld that that page consisted of? A. Pipelines.

Q. I believe you testified that you did not take Mr. Ferer up to the Casmalia property to make an inspection of it. Did he ever ask you to take him up?

A. No, sir.

(Testimony of Frank I. McGahan.)

Q. Did you offer to take him up and show him what was to be sold? A. Yes, sir; I did. [244]

Q. I believe you testified that at a meeting held in my office the phrase was read to you "All production and refinery equipment", and I believe you also testified that you did not state at that time that that consisted of surface equipment, is that correct?

A. That is correct.

Q. What did you understand the phrase "production and refining equipment" to mean?

Mr. Sturzenacker: Just a minute. I will object to that as calling for a conclusion of the witness.

The Court: Will it be argued that the witness knew that the phrase had the meaning which the plaintiff gives to this expression?

Mr. Sturzenacker: It will be so argued. I don't think this man is qualified to testify as to what that equipment would consist of.

The Court: I don't understand the question to be that but merely what he understood the term to mean. It has already been elicited from the witness that he had nothing to do with the production end of the business and he makes no pretense of being qualified on the subject matter.

Mr. Krasne: I think this, if the court please, that the witness has made it very apparent from his testimony that there was a decided distinction between surface equipment and other equipment, although the stress of this witness' testimony has been that he was to sell surface

(Testimony of Frank I. McGahan.)

equipment, surface [245] equipment and surface equipment. I think his own testimony shows that there is a distinction apparently between surface equipment and other equipment. And the significance of his having failed to mention surface equipment when he read only production equipment is quite apparent, and I think for him to testify as to what he considered that to mean, in the light of his testimony, would be rather meaningless.

The Court: If it is to be argued that this witness is to be bound by certain expressions he used, I think that opens the door to asking him what he meant by the expressions that he used. You may answer.

A. What was that question again, please?

(Question read by reporter.)

A. I understood production and refinery equipment to mean all surface equipment that we had for sale.

Q. By Mr. Paradise: Was that your understanding of what that phrase meant as it was used at the time it was brought to your attention at the meeting in my office?

A. Yes, sir.

Q. Did you have any other type of production equipment in mind at that time?

A. I did not.

Q. Just one more question. Getting back to your inventory, in which I think you testified that your notes did not constitute an inventory and that some items were omitted, did your overall tonnage include the omitted items? [246]

A. That was the purpose of rounding out the 1,500 tons, to include such items as I had not listed, which I knew to be there.

(Testimony of Frank I. McGahan.)

Q. And those omitted items were what?

A. Those omitted items were all pipe under two inches and valves, fittings and odds and ends of metal and steel on the lease.

Q. What was the nature of the pipe of a size less than two inches and where was that located?

A. Some of that pipe was inside of the oil lines and some of it was in use around the lease for small lines, say for water and gas.

Q. When you say inside of the oil lines, are you referring to the pipelines?

A. The oil pipelines; yes.

Q. Do you understand pipelines to be surface equipment?

A. Yes, sir.

Q. Does it matter how deep on the property pipelines are buried as to whether or not they are considered surface equipment in the oil industry?

A. No, sir.

Mr. Paradise: That is all.

Recross Examination

Q. By Mr. Sturzenacker: You expected these under two-inch pipelines to be sold, didn't you? [247]

A. Yes, sir.

Q. Did you ever see the offer that the Aaron Ferer Company made to Mr. Davis?

A. No, sir.

Q. Speaking of your definition of production equipment, is casing considered production equipment?

(Testimony of Frank I. McGahan.)

Mr. Paradise: I object to the question, if the court please, on the ground that it assumes a fact not in evidence.

Mr. Sturzenacker: I will withdraw the question.

Q. By Mr. Sturzenacker: In your opinion and from your interpretation of production equipment, does that include casing?

A. In my opinion, it would not. If somebody referred to production equipment to me, I would have no thought whatever that that included pipe or tubing or casing.

Q. Or rods?

A. Rods are not tubular. Rods, I would say, are production equipment.

Q. Pumps?

A. Pumps is surface and production equipment.

Q. Field tanks? A. Yes.

Q. Derricks? A. Yes.

Q. Engines? A. Right. [248]

Q. And where oil is of the consistency that this oil was at the Casmalia field and boilers used for shooting live steam into the pipelines for the purpose of allowing the oil to flow or heating it enough to make it flow, would you consider that production equipment?

A. Yes, sir.

Q. And the pipelines that ran to the wells?

A. Yes; I would.

Q. But you would not consider casing or tubing production equipment? A. No; I wouldn't.

Mr. Sturzenacker: That is all.

Mr. Paradise: That is all.

(Testimony of Frank I. McGahan.)

The Court: We will take a five-minute recess.

(Short recess.)

Mr. Paradise: May I recall Mr. McGahan for just one question, if the court please?

The Court: Very well.

Redirect Examination

Q. By Mr. Paradise: Mr. McGahan, calling your attention to the conversation which occurred in my office, to which you have testified, was it your understanding that the phrase "producing and refining equipment" referred to the same thing or to something else than the surface equipment which you had discussed with Mr. Zeidenfeld, Mr. Ferer and Mr. Clements? [249]

A. No; it referred to the same thing.

Mr. Paradise: That is all.

Mr. Sturzenacker: No questions.

Mr. Paradise: Mr. Zeidenfeld. [250]

DAVID ZEIDENFELD,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Please state your name.

A. David Zeidenfeld.

Direct Examination

Q. By Mr. Paradise: Mr. Zeidenfeld, have you ever been an employee of Aaron Ferer & Sons?

A. I was.

Q. At what time?

A. From January, 1940 until approximately April or May of 1941.

Mr. Krasne: May I have those dates again? And you will have to speak up.

(Testimony of David Zeidenfeld.)

A. January, 1940 until approximately April or May, 1941.

Q. By Mr. Paradise: In what capacity were you employed there?

A. As a buyer of scrap, ferrous and non-ferrous metals.

Q. For whom? A. Aaron Ferer & Sons.

Q. Did you solicit the purchase of material of that type from Richfield Oil Corporation during the time when you were employed by Aaron Ferer & Sons?

A. I did.

Q. Do you know Mr. McGahan? [251]

A. I do.

Q. Have you ever had any conversations with Mr. McGahan about the proposed sale of equipment at Casmalia? A. I did.

Q. Did you have more than one such conversation?

A. I believe there were two on this particular deal.

Q. When did the first conversation occur?

A. About September of 1940.

Q. Where did that take place?

A. At Richville.

Q. At Mr. McGahan's office?

A. Yes; in Long Beach.

Q. Will you state your recollection of that conversation?

A. Mr. McGahan told me that there was a deal coming up whereby they were going to sell a complete refinery. And I don't remember the name Casmalia being given at that time.

(Testimony of David Zeidenfeld.)

Q. Did Mr. McGahan say that the deal was to be limited to a refinery?

A. Well, there was nothing said, I don't believe, at that time any more than just a few words pertaining to there is a deal coming up and that at a latter date we will take it up a little more thoroughly.

Q. Did he state that there was to be sold any production equipment or producing equipment?

A. I don't remember whether there was stated whether it was going to be production or any other type of equipment. [252] All I knew was there was going to be a big deal coming up.

Q. Did Mr. McGahan state that it was to be limited to a refinery?

A. There was nothing really said at that time amounting to anything that was to be sold. All I know is that there was a deal coming up in the future.

Q. I think you stated something about a refinery. What was said about a refinery at that time?

A. Well, I don't think there were over four or five questions involved. If you are interested in me giving you an idea of what was said and the answers, I can give it to you in one expression, if you are interested in it.

The Court: Yes; we would like to know as best you can recall what was said in that conversation. If you don't recall the exact words, then give us the substance of what Mr. McGahan said and what you said.

A. Mr. McGahan told me that, "There is a pretty good-sized deal coming up, in which we are going to sell a lot of equipment." And I asked him, "How soon will

(Testimony of David Zeidenfeld.)

that take place?" And he told me, "Well, it will take a little while yet. We don't know whether we are going to sell the whole works or not, or whether we are going to split it up in piecemeal." And I told him at a later date, when that comes up, to let me know and that is about the end of that conversation. And I know there was something mentioned about refinery deal coming up. [253]

The Court: May I ask the reporter to read that answer slowly?

(Answer read by reporter.)

Q. By Mr. Paradise: Did Mr. McGahan tell you that there was to be any producing equipment sold?

A. There was nothing more said than what I just mentioned.

Q. Mr. Zeidenfeld, do you recall that your deposition was taken in this action on February 13th, 1942?

A. I remember that deposition.

Q. I will read you a question and answer from the deposition and ask you if that question was not asked of you and if that answer was not given by you at that time, on page 5, line 13:

"Q—Did Mr. McGahan state the equipment to be sold was to be surface equipment?

"A—At that time, if I remember right, there was supposed to be a lot of various types of refinery and producing equipment."

Was that question asked you and was that answer given by you at that time?

(Testimony of David Zeidenfeld.)

A. Well, if it is in that deposition, I am sure that I must have answered it that way. But the thing happened so long ago that I don't remember really any more said than when I said it a few minutes ago.

Q. Following that conversation, did you make any report [254] to Mr. Ferer? I mean Mr. Morris Ferer.

A. I came in the office that evening and, as is usually the case, there is a lot of commotion going on in the office, and I came in and told Mr. Ferer that there is a deal coming up at Richfield. And he told me, "Well, let me know when it is ready to take place."

Q. Did you tell him where the deal was?

A. No. I don't think, I myself, knew where the deal was.

Q. Had Mr. McGahan told you in your conversation with him where the property was located or where the equipment was located?

A. I don't remember whether there was any more said than what I said or whether there might have been something more said about it.

The Court: May I ask counsel to give me the reference to the deposition to which you directed the witness' attention a few moments ago?

Mr. Paradise: Yes, your Honor; page 5, lines 13 to 17.

Mr. Krasne: I should like, if the court please, without going through the deposition, to have the privilege of citing to your Honor other portions in the deposition where the witness said, if my memory serves me correctly, on numerous occasions, the same thing that he has said,

(Testimony of David Zeidenfeld.)

namely, that the discussion was in respect to a refinery deal coming up. In other words, that one bare statement in the deposition might be misleading if not taken in connection with all of the [255] other statements in the deposition. So I would like to have that privilege.

Mr. Paradise: I believe Mr. Krasne is privileged to use the deposition in his cross examination of the witness for impeachment purposes as well.

Q. By Mr. Paradise: Is it not true, Mr. Zeidenfeld, that Mr. McGahan told you in that conversation that the equipment was located at Casmalia?

A. He might have but the name Casmalia wasn't entrenched in my mind at that time.

Q. Do you recall whether or not he told you that Casmalia was located near Santa Maria?

A. He might have mentioned Santa Maria also.

Q. Did you tell that to Mr. Ferer in your conversation with Mr. Ferer in describing this conversation that you had had with Mr. McGahan?

A. I don't know that I told Mr. Ferer anything except that there is a deal coming up. I might have said Santa Maria or might not have because it was about 5:00 or 5:30 and there were a few people in his office, and it was just more or less referred to as a later date when something was coming up. There were a lot of deals going on at the office at the time and this was just one of many.

(Testimony of David Zeidenfeld.)

Mr. Paradise: I move to strike out that portion of the witness' statement which does not relate to what he said or what Mr. Ferer said to him as being not responsive. [256]

The Court: Let it go out.

Q. By Mr. Paradise: Did you describe the transaction in any more detail to Mr. Ferer at that time?

A. No.

Q. What was the occasion of your next discussion with Mr. McGahan?

A. I believe it was the latter part of November. I think it was the latter part of November.

Q. Where did that conversation take place?

A. The same as the first conversation.

Q. At Mr. McGahan's office?

A. Right.

Q. Will you describe what occurred at that conversation? Or, first, may I ask you was there anyone else present at that conversation?

A. Not that I know of.

Q. Will you describe what was said by both you and Mr. McGahan at that conversation?

A. Mr. McGahan said, I believe, that the property will be ready for sale within the next short period, probably a month or so or three weeks or so, and it would be advisable for me to go up and see what is up there. And there were these so-called records that you have as far as what he thought might be up there for sale.

(Testimony of David Zeidenfeld.)

Q. Are you referring now to Mr. McGahan's pencil memoranda, which are Defendant's Exhibit B? [257]

A. That is right.

Q. Did Mr. McGahan have those on that occasion of your conversation?

A. I remember seeing these records but not actually having inspected them closely. I remember just looking at the records.

Q. Did Mr. McGahan show you those pages?

A. Well, as far as showing me the pages, he had them in a book over there and he said, "Here is an idea of what we have up there." And I told him that, "I am not interested in knowing in detail what you have. I am interested in knowing how many tons you have up there so we can determine as to how much we can bid on the material. Give us an idea as to the tonnage."

Q. Did you look at those records or those memoranda for the purpose of determining that tonnage?

A. I didn't look at them at all. The only thing is Mr. McGahan had them in his hand. I didn't inspect them minutely or microscopically to a point where I knew exactly what was in the records.

Q. Do you recall that you saw any of those pages?

A. I remember distinctly on page 1 where he showed me the page and I saw "1,500" encircled. And I said, "Is that the tonnage that you figure that is up there?" And he said, "Well, my idea of that is a rough estimate but don't hold me to it as to whether there is less up there or whether there [258] is more up there. The best thing you can do is go up and look for yourself."

(Testimony of David Zeidenfeld.)

Q. Did he state that was the best estimate he had made of the tonnage?

A. He said he wouldn't guarantee that tonnage.

Q. Did Mr. McGahan tell you what that 1,500 tons consisted of?

A. Well, he told me there was a lot of equipment for sale and there was a lot of pipe for sale. I was probably in his office for about 10 minutes discussing certain things pertaining to routes to take up there and also to what might be there for sale. It was generally so many tons of steel and so many tons of pipe that was up there, that is, in his mind, that he had for sale.

Q. How many tons of steel did he say there were?

A. On this 1,500-ton calculation, I was told it was, roughly, 900 tons of pipe and 600 tons of steel.

Q. Did Mr. McGahan state what the steel consisted of?

A. Other than pipe is what the balance of 600 tons consisted of.

Q. What was the nature of the items that entered into that 600 tons of steel?

A. As far as I recall, it was refinery equipment and possibly tonnage of some of the steel in tanks.

Q. Tanks, did you say? A. Yes. [259]

Q. Do you recall whether or not that included the boilers?

A. Well, I presume in the refinery equipment that the boilers would be in that deal, too.

(Testimony of David Zeidenfeld.)

Q. Didn't it also include the production equipment other than the pipelines, Mr. Zeidenfeld?

A. Well, as far as I am concerned, I wasn't fully aware as to production equipment being mentioned too much at that time.

Q. You knew that the estimate covered both production equipment and refining equipment, did you not?

A. No; in my own mind I assumed that the tonnage up there—or in my own mind I originally assumed that there was a complete refinery for sale, with storage tanks and boilers and a few other things to run the refinery.

Q. Did you examine these—I will withdraw that. At the time Mr. McGahan called your attention to these pages at that conversation, did you see that each one of the pages, that is to say, practically each one of the pages, has two columns on it, one headed "Production Department" or "Production Equipment" and the other headed "Refinery Department" or "Refinery Equipment"?

Mr. Krasne: Just a second. I object to the question on the ground it assumes facts not in evidence. The witness has not testified that Mr. McGahan called his attention to these pages. He said he had some pages and he looked at the [260] first page because he was interested in the overall tonnage.

The Court: May we have the question read?

(Question read by reporter.)

The Court: I think the criticism is well taken.

(Testimony of David Zeidenfeld.)

Q. By Mr. Paradise: At the time of that conversation, did Mr. McGahan show you page 2?

A. To give you a detailed idea of how I inspected these pages, Mr. McGahan had them in his hand and he thumbed through every page. And I told him, "I am not interested in anything in those pages but how many tons do you have?" And I wasn't inspecting those pages as he was going through them but he tried to give me an idea of what I might go up to see. But I told him, "As far as I am concerned, all I am interested in is how many tons you have up there." And, even though I would have inspected those minutely, he says not to hold him, Mr. McGahan, to anything in those things but to go up there and inspect it myself.

Q. Would you say, Mr. Zeidenfeld, that you did not read on any of these pages the words "Production Equipment" or "Production Department" or "Refinery Equipment" or "Refining Department"?

A. I might have seen them and glanced at them but it didn't strike me at all as "Production" or "Refining", not being too familiar with the terms as a buyer of scrap iron and metals. All I knew was there was oil field supplies for sale at all times and it didn't make any difference to me [261] whether it came from the production or the refinery department. I was simply interested in tonnage and I wouldn't recall exactly enough to say what was on those pages with the exception of that circle around the "1,500" that I distinctly remember.

(Testimony of David Zeidenfeld.)

Q. Do you recall page 7? Did Mr. McGahan show you that?

A. I don't recall looking at that page at all with the exception it was thumbed through. He just went through them like this and that is about all. The only thing I do remember is he did stop at one page called "Pumps" and he said, "There are a lot of pumps on these pages that we are holding out, that are marked 'sold.'" And outside of that page and the "1,500" on page 1 I wouldn't recall anything else on the rest of the pages.

The Court: May I ask what page the witness has now been pointing out?

A. The page that I am referring to is page 8, entitled "Pumps." These were not inspected minutely, either. He probably dwelt on this for around half a minute or so, that there were certain pumps being withheld.

Q. By Mr. Paradise: Did you read that page at the time?

A. I didn't read it at all. It was just shown to me and he said, "Here are some pumps that are being held out." And I think Mr. McGahan did the talking for about half a minute and that is all there was to it.

Q. Did you see the page at that time? [262]

A. As far as seeing it, that is the only way I can tell you I remember it. I probably saw that one page.

Q. That page contains a breakdown of the pumps in two columns, does it not, one under the heading of "Production" and the other under the heading of "Refinery"?

(Testimony of David Zeidenfeld.)

Mr. Krasne: We object to that on the ground it is incompetent, irrelevant and immaterial what that page shows. It is what the witness saw at the time of his discussion with Mr. McGahan.

The Court: The document itself is in evidence. So I don't suppose we should ask the witness what it indicates.

Q. By Mr. Paradise: You stated that of the 1,500 tons, Mr. Zeidenfeld, that you were informed about at that time, 600 consisted of steel and 900 consisted of pipe. Did Mr. McGahan describe the pipe?

A. So far as Mr. McGahan describing the pipe, I have in my own mind—

Q. I asked you for your description or I mean for the conversation, Mr. Zeidenfeld.

The Court: Will you read the question?

(Question read by reporter.)

A. He described to me that there was a lot of pipe up there.

Q. By Mr. Paradise: What did he say, Mr. Zeidenfeld?

A. He might have mentioned a pipeline once in a while but as far as the whole conversation it didn't take any too [263] long a time. So that there wasn't too much could have been talked about regarding it.

Q. Did Mr. McGahan inform you of the lengths of the pipelines?

A. I don't recall anything about lengths of pipelines.

(Testimony of David Zeidenfeld.)

Q. Did he tell you anything about the sizes of the pipelines?

A. Getting back to the fact of pipelines, I don't remember of we having discussed pipelines too much. It was just the idea I was interested in so much pipe up there and I think the word "pipe" was more or less discussed.

Q. Did Mr. McGahan not tell you that the pipe that is shown on page 7 of this Defendant's Exhibit B consisted of pipelines?

A. If he did, I don't recall it.

Q. Would you say that he did not so state at that time?

A. I wouldn't want to state, being under oath.

Q. You have no recollection about that?

A. I have no recollection of it.

Q. What else was discussed at that conversation, Mr. Zeidenfeld?

A. Oh, possibly other deals that we were working on with Richfield at the same time.

Q. I mean in connection with this transaction, that is to say, in connection with the equipment at Casmalia.

A. I don't think much more was discussed about it with [264] the exception of to go up and see what is there.

Q. Did Mr. McGahan suggest that he visit the property with you or suggest that you visit it alone?

A. No; he suggested that I might make a date and meet him there sometime and inspect what was there.

(Testimony of David Zeidenfeld.)

Q. With you?

A. With me or with somebody else from the firm.

Q. At that time and at that conversation what was your understanding of the nature of the equipment at Casmalia that was being sold by Richfield?

A. The understanding that I had was that everything at Casmalia would go unless Richfield felt it didn't bring enough money and then they would split it up and sell it piecemeal.

Q. I mean the nature of the equipment that was to be sold.

A. As far as it being discussed too much, I don't remember too much about it, but I had it fixed in my own mind that there was a refinery deal at Casmalia to be sold and the only way we could determine as to what would be sold would be to go up there and inspect it.

Q. Was it your understanding that the 900 tons of pipeline were a part of the refinery?

A. I figured that the 900 tons of pipeline were parts of the refinery and interconnecting lines between tanks leading to the refinery or in the refinery. I didn't assume there [265] was anything on the lease but a refinery at the time.

Q. Did you know how far those pipelines extended?

A. I didn't know anything about the property, never having been up there.

The Court: Mr. Reporter, will you read the last two questions and answers?

(Record read by reporter.)

(Testimony of David Zeidenfeld.)

Q. By Mr. Paradise: Did Mr. McGahan tell you that surface equipment was what the property consisted of or I mean what the equipment consisted of which Richfield was selling?

A. I don't remember the term exactly being used of "surface equipment". It might have been used at some time or other but I wouldn't say that I recall it exactly being used as "surface equipment".

Q. Was it your understanding that the equipment that was to be sold was surface equipment?

A. Well, in my own mind, I assumed that the equipment up there would all be on the surface because of the fact I assumed it was a refinery to be sold.

Q. What led you to the understanding that it was the refinery alone that was to be sold? Did you arrive at that conclusion from anything Mr. McGahan said?

A. I believe Mr. McGahan says, "We have a pretty good-sized refinery deal up at Casmalia" at the second meeting.

Q. Did he describe the location of the tanks? [266]

A. I don't recall anything about the locations of tanks being mentioned at that time because I understood the property was pretty large and only by personal inspection could I determine just where everything was.

Q. Did you know how large the property was?

A. I had no idea. I know it was pretty good-sized.

Q. Did you know it was 400 acres?

A. I wouldn't want to say whether it was 400 acres or twice that large or half that small.

(Testimony of David Zeidenfeld.)

Q. Did you think the refinery covered the full 400 acres? A. I don't know.

Mr. Krasne: I object to that as incompetent, irrelevant and immaterial.

The Court: I think the objection is well taken.

Q. By Mr. Paradise: What did Mr. McGahan state in connection with a visit to the property to be made by you and him together? Do you recall?

The Court: I think the witness has already answered that. I think, in substance, he has testified that Mr. McGahan suggested that a date be made and that either the witness or somebody meet him at the property to see what was there.

Mr. Paradise: That was the part that I wanted to develop, from that point on.

Q. By Mr. Paradise: Did Mr. McGahan tell you at that time that there would be pointed out to you the particular [267] items that were to be sold?

A. He told me at the time, if we can make arrangements to meet up there, he would go over the property with me, and, naturally, show me what was around there to be sold, I assume.

Mr. Paradise: I didn't hear that last.

(Record read by reporter.)

Q. By Mr. Paradise: Did he state that he would show you which items were to be sold at the time of that examination?

(Testimony of David Zeidenfeld.)

A. Well, that is, naturally, to be taken when you meet somebody that is supposed to show you something to sell; that he is going to show you what is going to be sold.

The Court: I think we are getting into an argument now.

Q. By Mr. Paradise: Following that conversation, Mr. Zeidenfeld, did you make any report to Mr. Morris Ferer?

A. I did. And it was the same type of report as the first report, where I came into the office late in the afternoon, after my day's travels, and I remarked to him that, "That deal is coming up pretty quick now", and I told him that it might be a good idea maybe to go up. But there were a few other people in the office, as I said before, the last time, and the same thing happened this time, and whether Mr. Ferer got the full significance of what I had said to him I don't recall.

Mr. Paradise: I move to strike the entire portion of [268] the witness' answer except as to his conversation with Mr. Ferer.

Q. By Mr. Paradise: Will you limit your answer to what you said to Mr. Ferer and what he said to you?

The Court: May I ask the reporter to read the answer?

(Answer read by reporter.)

The Court: Strike out the latter part of the answer where the witness begins to tell about other people being in the office. The balance of the answer may go out.

(Testimony of David Zeidenfeld.)

Q. By Mr. Paradise: How long after your conversation with Mr. McGahan did you make this report to Mr. Ferer?

A. Possibly the same night or same evening.

Q. Did you tell him the quantity, that is to say, the tonnage, of the equipment that Mr. McGahan had reported to you? A. I might have.

Q. Do you recall what you told him?

A. I might have told him there was about 1,500 tons of material up there to be sold.

Q. Did you tell him—

The Court: May I interrupt here? The court is not interested in what you probably did or did not do. If you have any recollection on the subject, give us the benefit of your best recollection. Now, you have already testified concerning this second conversation with McGahan. You have also told us that you think, about the evening of the same [269] day of this conversation with McGahan, you gave some kind of a report or statement to Mr. Morris Ferer. You do remember talking to him about it, do you? A. I do remember mentioning it to him.

The Court: Unless you can remember the exact words, tell us as best you can recall the substance of what you said, and what, if anything, Mr. Morris Ferer said.

A. I believe, to the best of my recollection, that I told him that "This Richfield deal is coming up pretty quick now," and that, if he were interested in the thing, he had better go up and take a look at it. As to whether or not I had said too much about details on it, I don't recall. If the court is interested to know, there is al-

(Testimony of David Zeidenfeld.)

ways confusion around an office or a concern like Aaron Ferer & Sons around closing time because everybody is coming in with reports, and there is only taken into consideration actual deals that are taking place now, working deals, instead of deals that might come up the next two or three weeks or a month or so.

The Court: Let the volunteered answer go out.

Q. By Mr. Paradise: Did you tell Mr. Ferer at that conversation the quantity that was to be sold and how that quantity was broken down, that is to say, in terms of tonnage?

A. I might have.

Q. Do you recall whether you did or not?

A. I wouldn't want to say for sure.

Q. Mr. Zeidenfeld, I call your attention to pages 38 and [270] 39 of your deposition and ask you if these questions were not asked of you and if these answers were not given by you at that time, starting on page 38, line 13:

"Q—Subsequent to the conversation I just mentioned, which you had in Mr. McGahan's office, what conversation did you have with Mr. Ferer about this matter?

"A—I think at one time I came into the office and there was another salesman in the office at the time. It was not exactly a meeting amongst ourselves. I think it was after 5:00 o'clock when I brought the matter up to Mr. Ferer. I don't know whether he, himself, felt—

"Q—I am only asking you for the conversation; not as to what you think Mr. Ferer felt.

"A—I don't want to guarantee exactly the day when I brought it up to him. I tried to see him a couple of days after that. There were so many deals, of which this was just one, which I brought up to him.

(Testimony of David Zeidenfeld.)

“Q—Confine yourself to your discussion with Mr. Ferer as to this particular deal. What was your conversation?

“A—My conversation with Mr. Ferer—I would like to get something straight. I remember speaking to him but whether I spoke to him first or Mr. Clements spoke to him first I don’t recall.

“Q—I am not asking about any conversation with Mr. Clements. I just asked you about your conversation with Mr. Ferer. [271]

“A—I think I spoke to him about so many tons of pipe up there and so many tons of steel.

“Q—When you say so many, did you mention the quantity?

“A—I think I told him the estimate Richfield had was, roughly, 1,500 tons, of which 900 tons was pipe and 600 tons was steel, which will have to be looked at pretty quick because they will be asking for a bid on it in the near future, in a week or two weeks from now.”

Do you recall that those questions were asked of you and those were the answers you gave at that time under oath?

A. Yes; those were the answers that I gave in the deposition, that I recall.

The Court: Where did you stop in that reading?

Mr. Paradise: Line 18 on page 39.

Q. By Mr. Paradise: Do you know whether that conversation with Mr. Ferer occurred before or after Aaron Ferer & Sons submitted its written bid to Richfield Oil Corporation?

A. Well, it took place before the bid was submitted to Richfield.

(Testimony of David Zeidenfeld.)

Q. Your conversation with Mr. Ferer took place before that bid? A. That is right.

Q. Did you have any other conversation with Mr. Morris Ferer about this transaction?

A. I don't recall whether there were any more transactions that had anything to do with talking to Mr. Ferer [272] afterwards because I understand he and Mr. Clements had been in on the deal after that.

Mr. Paradise: I move to strike out the portion starting with the words "I understand."

The Court: Let the answer go out.

Q. By Mr. Paradise: Do you recall a conversation with Mr. Ferer in which you suggested the price which Aaron Ferer & Sons should bid in making its bid to Richfield Oil Corporation for this equipment?

A. Yes; I believe that did happen after the second conversation that I had with him.

Q. After the second conversation?

A. I mean after that conversation, the second conversation with Mr. McGahan, when I came into the office and submitted that little report to Mr. Ferer.

Q. I think you testified that approximately the same evening, after you talked to Mr. McGahan and Mr. McGahan showed you the estimates and the 1,500 tons, you then reported to Mr. Ferer and told him about the tonnage, is that correct? A. I might have done that.

Q. At that same conversation, did you discuss with Mr. Ferer the price to be offered to Richfield?

A. I wouldn't want to guarantee whether it was at that time or not. It might have been. It has been so long ago I wouldn't want to confine myself. [273]

(Testimony of David Zeidenfeld.)

Q. Do you recall any other conversation when you discussed that with Mr. Ferer, that is, the price?

A. I don't remember whether there was any subsequent conversation after that or not.

The Court: Let me see if I understand the witness. Do you or do you not recall having had some kind of a conversation with Mr. Morris Ferer, wherein either you or someone during that conversation suggested a price that should be offered to Richfield?

A. I remember a conversation I had with Mr. Ferer but whether it came in the second conversation or whether it was a subsequent conversation I don't recall.

The Court: In any event, regardless of when it occurred, did it take place before Ferer & Sons submitted a bid to Richfield? A. As far as I recall, it did.

Q. By Mr. Paradise: And what price did you suggest to Mr. Ferer, that is, suggest that Aaron Ferer & Sons bid on the property?

A. Well, I didn't suggest to Mr. Ferer that he bid anything on the property but I told him that, if he is interested in buying that property, he would have to bid somewhere in the amount of \$20,000.00.

Q. And, when you mentioned that amount, what tonnage did you have in mind?

A. Well, this 1,500 tons, roughly. [274]

Q. I didn't understand your answer to one other question. Did you state whether you recalled when that conversation took place, when you mentioned the \$20,000.00? Was that before or after Aaron Ferer & Sons submitted its bid to Richfield? A. I believe it was before.

(Testimony of David Zeidenfeld.)

The Court: We will take a recess until 2:00 o'clock this afternoon.

(Whereupon a recess was taken until 2:00 o'clock p.m. of the same day, Thursday, September 10, 1942.) [275]

Afternoon Session

2:15 o'clock.

(Appearances as last noted.)

DAVID ZEIDENFELD,
recalled.

Mr. Paradise: No further questions.

Cross Examination

Q. By Mr. Krasne: Mr. Zeidenfeld, I think you stated, in reply to one of Mr. Paradise's questions, that you had suggested to Mr. Ferer that he bid \$20,000 for this deal. Did you so testify?

A. I suggested it to Mr. Ferer as far as—I definitely can't say that I did suggest it to him.

Q. Had you ever seen the property that Richfield proposed to sell? A. No; I did not.

Q. Had you ever been up to Casmalia at all?

A. Never.

Q. Do you mean to be understood, then, to say that, not having seen the property and having heard only Mr. McGahan's rough estimate as to what he thought there was there, you suggested to Mr. Ferer that he bid \$20,000 for that property?

(Testimony of David Zeidenfeld.)

A. No; I didn't mean it at all as far as that is [276] concerned. This \$20,000 figure that is being used is nothing more than what I had picked up in going around to different people who might have been bidding on it or I might have picked it up from some person at Richfield or some other place as a figure that Richfield will take for the material; that, otherwise, if they don't receive that, they will cut it up into piecemeal lots and sell it that way.

Q. Let's see if I understand you. You had heard from some source, which you don't now know or don't remember, that, unless Richfield had received \$20,000 to sell the equipment lock, stock and barrel, they would then sell it piecemeal? Is that what you meant?

A. That is the way I understood it.

Mr. Paradise: I move that the answers of the witness be stricken as to the conversations he had with other persons about the amount they would take unless that information came from Richfield. I don't understand the witness' statement in that regard. I think the cross-examination should be limited to his conversation with Mr. Ferer.

The Court: May we have the question and the answer?

Mr. Paradise: There were two questions, I think, your Honor, on the same point.

(Record read by reporter.)

The Court: By your last answer, do I understand you to say that in some conversation with Mr. Morris Ferer you told him, either in words or in substance, that, based upon [277] information that you had picked up about

(Testimony of David Zeidenfeld.)

prospective bids for this salvage, you believed that, unless Richfield received a bid of \$20,000, that company would split up the property to be sold and offer it in small lots?

A. That is the way I understood it. That \$20,000 figure does not necessarily mean that on a 1,500-ton basis I made that figure out of my own mind on that tonnage as to what it was worth because nobody ever bids on anything of that magnitude without inspection.

The Court: All I am trying to find out is what you mean by a portion of your testimony. In one of your conversations with Mr. Morris Ferer was some reference made to the figure of \$20,000?

A. I wouldn't swear to it under oath but I believe that I did mention it to him about \$20,000 might take the deal on a lump sum basis or else they will cut it up into smaller lots and sell it piecemeal.

The Court: Is it your recollection that you said something of that kind to Mr. Morris Ferer before he put in the bid?

A. Well, I believe I might have mentioned it but I can't recollect definitely that I did say it.

The Court: I will allow the testimony to stand.

Q. By Mr. Krasne: When Mr. Paradise asked you, then, if you had the 1,500 tons of material in mind when you suggested to Mr. Ferer that he would have to bid \$20,000 on [278] this deal, did you mean to convey the impression to the court that, because you thought there were 1,500 tons of material there, the bid should be in the sum of \$20,000?

A. Absolutely not.

(Testimony of David Zeidenfeld.)

Q. I believe you stated that you were a buyer for Aaron Ferer & Sons during 1940 and part of 1941. Will you please explain what you mean or what you meant when you said you were a buyer for that company? Just what did you buy? What were you authorized to buy?

A. I was authorized to buy individual lots of scrap, ferrous and non-ferrous, materials that we had bid on or to go out and inspect and bid on a per ton or per pound basis but not on materials that ran too big an amount.

Q. As a matter of fact, you didn't have any authority to make any purchase for Aaron Ferer & Sons except on a per ton basis, isn't that right?

A. That is partly correct. I did have authority on making deals where there might have been 10 or 15 tons or 20 tons involved on a lump sum basis but, when it came to a pretty good sized deal, Mr. Ferer handled it personally.

Q. And, if a deal contemplated not only the purchase of the material but the dismantling of it and the transporting of it and the estimating of the cost of those various items, you had no authority to make such purchases for Aaron Ferer & Sons, did you?

A. No; I did not. [279]

Q. Will you please explain the circumstances which attended your discussing this purchase with Mr. McGahan the first time—I will withdraw that. Did you go down to see Mr. McGahan to talk to him about this particular deal?

A. No. To explain fully, I used to make the Long Beach area or call on certain people in the Long Beach area, such as the Richfield Oil Corporation and other oil

(Testimony of David Zeidenfeld.)

companies, and I stopped in at the Richfield Oil Corporation every once in a while to see if there was anything for sale, or we might have had a bid and I was there for inspection or I might have been picking up some material.

Q. If I understand you correctly, on this first occasion you had a discussion with Mr. McGahan, did Mr. McGahan just casually mention the fact that there was a deal coming up?

A. That is the way it came up the first time.

Q. Did he on the occasion of your first discussion with him tell you that this was a refinery deal or just what kind of a deal did he tell you was coming up?

A. To the best of my recollection, it was told to me that there was a pretty good sized refinery deal for sale up north and it won't be ready for sale for a few months yet. So I told him to let me know when it comes up.

Q. Your answers in response to Mr. Paradise's question or questions are not very definite as to whether or not Mr. McGahan said anything to you about Richfield proposing to [280] sell surface equipment. I should like to ask you now whether Mr. McGahan ever used the words "surface equipment" to you in connection with the discussion of the proposed sale?

A. In my few discussions with Mr. McGahan, they were such short periods of discussion on this that I don't recall any time that "surface equipment" in itself was actually used.

Q. Would you say that he did or did not tell you that Richfield proposed to sell surface equipment?

A. Do you want that in a direct yes or no answer or can I elaborate on that?

(Testimony of David Zeidenfeld.)

Q. I would like to have a direct answer.

The Court: Then, if you wish to explain your answer, you may do so.

A. The words "surface equipment" I recall were never used to me and all I was told was that there was a refinery deal for sale up north. And from the fact that the refinery deal was for sale and pipe and other equipment, junk and so forth, I assumed in my own mind, from the fact that it was a refinery, that all of the material was such as they call surface equipment.

Mr. Krasne: I move that the last portion of the witness' answer be stricken as not responsive and not being an explanation of his answer.

The Court: As the answer now stands, I think that last sentence should go out and it is ordered stricken out.

Q. By Mr. Krasne: I take it that your answer would be [281] the same with respect to all of the conversations that you had with Mr. McGahan about this deal?

A. So far as I recollect, that is the way the discussions went.

Q. Have you now repeated, to the best of your recollection, all of the conversation that you had with Mr. McGahan the first time you discussed this deal with him?

A. Well, only what I believe I mentioned before; that it was just a casual remark by Mr. McGahan that there is a deal coming up; that a refinery deal was coming up. And I told him, when it is ready, to let me know further on it.

Q. And, when your first conversation with Mr. McGahan had been concluded, did you understand from what was said that it was a refinery that was to be sold?

A. That was my understanding.

(Testimony of David Zeidenfeld.)

Q. When you had the second conversation with Mr. McGahan, which I believe you fixed as the latter part of November—is that correct?

A. It was either the latter part of November or the first part of December.

Q. And this was the occasion, was it, when reference was made to Mr. McGahan's estimate of 1,500 tons of material?

A. That is right.

Q. At the conclusion of this second conversation with Mr. McGahan, was it your understanding that Mr. McGahan was still referring to a refinery that was to be sold? [282]

A. That is the way I understood it.

Q. And, if you have at any time in your testimony heretofore stated that you understood that something more than a refinery was for sale, do you now wish to correct that testimony?

A. Well, as far as I know or as far as I have in my own mind felt, that is all that was for sale, was a refinery.

Q. Did you or did you not know that on the Casmalia property there was anything but a refinery?

A. That is all that I thought was there, a refinery, and, as I said before, interconnecting lines between tanks to feed the refinery and that is all.

Q. When you testified that Mr. McGahan had before him on the occasion of this second conversation the pencil notations that have been introduced as Defendant's Exhibit B, I should like to ask you whether you actually read the contents of those pages.

A. I did not.

(Testimony of David Zeidenfeld.)

Mr. Paradise: Do you mean the entire contents? Is that the question?

Mr. Krasne: I will ask the question a little differently.

Q. Did you actually read page 1 of this exhibit?

A. I didn't read page 1. The only thing that interested me as far as page 1 was that item of 1,500 tons that was shown to me.

Q. That is the 1,500-ton figure that I call your [283] attention to now about the center of the page or a little bit above, is it?

A. With a circle around it; that is right.

Q. And you did not read anything else on the page, is that correct?

A. As far as I recollect, that is all that was brought to my attention with the exception of Mr. McGahan told me that there was 900 tons and 600 tons, of which 900 tons was pipe and 600 tons was steel.

Q. I call your attention to page 2 and I will ask you whether or not you read that page on the occasion of this conversation with Mr. McGahan. A. I did not.

Q. Would your answer be the same with respect to page 3?

A. My answer would be the same for the whole set-up that you have there with the exception of that one page, a little bit on page 7 with reference to a few pumps.

Q. And, if, therefore, there were any words on these pages indicating that there was production equipment listed, would you say you did or did not see such words on the occasion of this conversation?

A. I did not see such words.

(Testimony of David Zeidenfeld.)

Q. So that, if at any time during your testimony you have said that these sheets were shown to you by Mr. McGahan, I now understand that they were not shown to you in the sense that you read them or looked at the contents of them, is that [284] correct? A. That is correct.

Q. On the day that you had this second conversation with Mr. McGahan, had you on this occasion gone down to see Mr. McGahan to discuss this deal or did you happen to be there on some other matters of business?

A. I was there on a routine call, the same as my first call.

Q. What did Mr. McGahan tell you in this conversation that Richfield wanted to sell?

A. He told me that they wanted to sell everything up—I believe he might have mentioned the word “Cas-malia” at that time but he said they wanted to sell the whole refinery up there complete. And he showed me this reference to the 1,500 tons that was up there but said not to use that figure as conclusive that there was 1,500 tons or more or less but for me to go up there and see what was there and to make my decision therefrom.

Q. Did he tell you that Richfield was or was not ready to accept bids on the property?

A. He told me that they would be ready to accept bids possibly in two or three weeks on this deal and it might be a pretty good idea to go up there and see what it was all about because I might have to make a few more trips after the first trip.

(Testimony of David Zeidenfeld.)

Q. Now, coming to the conversations that you had with [285] Mr. Morris Ferer, first, after the first conversation that you had with Mr. McGahan, will you please tell us when you had a conversation with Mr. Ferer about this matter first?

A. It was possibly the same evening or within a day or so after this discussion with Mr. McGahan. That is the first discussion.

Q. Where did that discussion take place?

A. Do you mean with Mr. McGahan?

Q. No; with Mr. Ferer.

A. In Mr. Ferer's office.

Q. Who was present?

A. Oh, there was always a few in the office and I presume there were a couple in the office with Mr. Ferer at the time. I don't recall just who was there.

Q. Will you give us that exact conversation as nearly as you can remember it?

A. As far as I can recall, I told Mr. Ferer that there was a deal coming up at Richfield. And Mr. Ferer told me, "Well, are they ready to shoot on the deal because we don't want to make any goose chase?" And I says, "I don't think it will really be a deal for a little while yet. It is just in real preliminary discussions." And he says, "Well, let me know when it comes up," and that was the end of it.

Q. And that was all that was said during that first discussion?

A. During that first discussion; yes. [286]

(Testimony of David Zeidenfeld.)

Q. The next time you discussed it with Mr. Ferer, I believe you said it was after your second talk with Mr. McGahan? A. That is right.

Q. A number of times during your direct examination you have said you might have said something to Mr. Ferer or you might not have. I want to ask you now directly whether or not you told Mr. Ferer that the deal which you were talking about was a refinery deal or a refinery and producing deal. What did you say about that to him, if anything?

A. If I told him anything about it, as far as I recall, I told him that there was a refinery deal for sale.

Mr. Paradise: I move to strike the answer, if the court please, on the ground that the witness has so qualified it that it indicates that he didn't make any such statement.

A. That was in the second discussion.

The Court: Mr. Reporter, will you read the question and the answer. And I wish you would listen carefully because I am going to ask you a question.

(Record read by reporter.)

The Court: Now, in your answer you said, "If I told him anything about it." Have you any recollection now of having any conversation with Mr. Morris Ferer concerning your second conversation with Mr. McGahan?

A. Well, my mind is a little hazy as to just exactly what was said. [287]

The Court: I am not asking you what was said. Did you talk to him at all and did you tell him you had had a talk with McGahan following your second conversation with McGahan?

(Testimony of David Zeidenfeld.)

A. I recollect saying something to Mr. Ferer but, to be specific as to exactly what I told him, I wouldn't want to swear to it.

The Court: All right. You do remember mentioning something to Mr. Morris Ferer about having a second conversation with McGahan? A. That I recall.

The Court: And was that about a prospective sale of salvage by Richfield?

A. It was concerning that particular deal that this case is about.

The Court: Now, from that point on, as far as you can recall, and, if you can't remember the words, tell us the substance of anything else that you can remember of what you reported to Mr. Morris Ferer following that second conversation with McGahan about the sale of salvage at Casmalia.

A. I can't be too specific as to exactly what I told him because right after that I was shunted out of the whole deal and there was nothing asked of me because he and Mr. Clements had gone in on sort of a partnership arrangement on it. I don't know whether Mr. Clements had gone in with him prior to my second talk with Mr. McGahan or afterwards.

The Court: I am not asking you a thing about Clements or [288] about any partners. Now, we can save a lot of time, your time as well as ours, if you will listen to the questions and answer the questions and don't volunteer anything else. All we are trying to find out is what you can remember of your conversation with Mr. Morris Ferer concerning the Casmalia deal after the sec-

(Testimony of David Zeidenfeld.)

ond conversation that you had with McGahan on that subject. Now, do you remember anything that you told Morris Ferer?

A. I remember speaking to him about the deal but I can't be conclusive, to tell you exactly, what I might have said to him or even the substance of it. But we didn't sit down and really discuss this thing. It was just something that was brought up in an ordinary come and go proposition in the office. It was late when I came in and Mr. Ferer was ready to go home and nothing was really discussed about it.

The Court: Have you anything further?

Mr. Krasne: Yes, your Honor.

Q. As a matter of fact, Mr. Zeidenfeld, although you have been asked about discussions which you may have had with Mr. Ferer about this subject matter, isn't it true that all you ever did was to just casually refer to this deal to Mr. Ferer? A. That is right.

Q. You never did sit down and talk to him about any of the details of the deal? Isn't that the truth of the matter? A. That is right. [289]

Q. Did you know that Mr. Ferer was going up to look at the Casmalia property before he made a trip?

A. I did not.

Q. Did he tell you that he was going?

A. No; he did not.

Q. Did he discuss with you—strike that, please. Did you have any conversations with Mr. Ferer after he had returned from his trip to Casmalia?

A. I don't recall having anything much to do with that deal after he made the trip.

(Testimony of David Zeidenfeld.)

Q. After you had had these preliminary discussions, the two discussions with Mr. McGahan, did you thereafter carry on any of the negotiations for the purchase by Aaron Ferer & Sons of the Casmalia property from Richfield? A. No; I did not.

Q. In other words, if I understand you correctly, after these two preliminary discussions which you happened to have with Mr. McGahan when you were there on other business, you never thereafter had anything whatsoever to do with the making of this deal, isn't that right?

A. That is right.

Mr. Krasne: That is all. [290]

Redirect Examination.

Q. By Mr. Paradise: Mr. Zeidenfeld, did Mr. McGahan ever mention the sum of \$20,000.00 to you?

A. Mr. McGahan?

Q. Yes? A. I don't think he did.

Q. Did anyone else who was employed by the Richfield Oil Corporation ever mention the sum of \$20,000.00 or a sum of approximately \$20,000.00 to you in connection with this transaction?

A. It was never mentioned.

Q. When you say that you thought it would take \$20,000. to buy that equipment at Casmalia or that Richfield would sell it piecemeal, did any part of that information come to you either from Richfield, Mr. McGahan or anyone else connected with Richfield?

A. I wouldn't say directly that it did.

(Testimony of David Zeidenfeld.)

Q. Would you say indirectly that it did?

A. It might.

Q. I don't understand your answer, Mr. Zeidenfeld. Did you discuss it with anyone connected with Richfield or employed by Richfield?

A. Well, it is a hard question to answer. Or I might put it to you this way, that I spoke to Mr. McGahan concerning this deal, as to what it will take to buy it.

Q. Did you ask him that? [291]

A. And Mr. McGahan wouldn't give me any information. And you might call it a little wheedling that I did now and then and I didn't exactly get the amount that it would take from Mr. McGahan but I might have started at \$10,000.00 and \$15,000.00 and \$20,000.00, and I got a little better reply to the \$20,000.00 figure than I did to any other figure.

The Court: Let me interrupt here. Every so often you use an expression, "I might have said this" and "I might have asked that." What I am interested in knowing is not what you might have done but have you any recollection, hazy or otherwise, of discussing the subject matter of the possible figure that would have to be bid with Mr. McGahan? A. Yes.

The Court: All right. Now, tell us the extent to which you can remember what either you or McGahan said on that subject.

A. Well, in the course of conversation I tried to get a figure from him as to what it might take to buy the deal and Mr. McGahan didn't exactly come out with the exact amount as to what it would take; but I in my

(Testimony of David Zeidenfeld.)

own mind, after talking to him, surmised that the \$20,000.00 figure would be the amount the Richfield would take and that, otherwise, they would cut it up in piecemeal.

The Court: You say you surmised that in your own mind. What did he say that led you to surmise that?

A. He might have smiled at the time I made a price of [292] \$20,000.00 or asked him if it will take that amount. In going out and purchasing material of this type, you can usually determine from the person you call on as to how to go about getting information of that kind.

The Court: Yes; I have heard you tell us about what usually happens but I have to decide this case, including what weight is to be given to your testimony, and I am interested not in what generally happens but what you can remember actually happening in this particular transaction.

A. I will say this, that Mr. McGahan didn't give me any actual information of \$20,000.00; that as far as that figure is concerned I took it on myself. I will put it, to say that that will be the amount that will buy the deal from my discussions with Mr. McGahan, although he didn't give me the exact amount.

The Court: Do you remember telling that much to Mr. Morris Ferer after your second conversation with McGahan?

A. I wouldn't swear to it, that I told it to him, but I believe that I did.

(Testimony of David Zeidenfeld.)

The Court: Then, do I understand that you do recall that during your second conversation with Mr. McGahan on this subject you asked him how much it would take to buy this salvage and Mr. McGahan declined to tell you, is that right? A. That is right.

The Court: And do you also recall that then you asked him whether any one of several different figures would get [293] the deal and that Mr. McGahan declined to answer but you thought he smiled when you mentioned the figure of \$20,000.00? A. That is right.

The Court: That is all.

Q. By Mr. Paradise: Mr. Zeidenfeld, calling your attention to both conversations you had with Mr. McGahan, both the one in September and the one at the end of November, to which you have testified, at either of those conversation did Mr. McGahan ever mention the phrase "producing equipment"?

A. He might have but I don't recall.

Q. Do you recall either that he did or did not?

A. I wouldn't want to say because it has been so long ago that I wouldn't want to go on record as saying that I do remember or don't remember because I don't.

Q. Then, it is vague in your mind whether he used that expression or not, is that correct?

A. That is right.

Q. Do I understand, then, that your answers to Mr. Krasne's statements or questions concerning a refinery deal—that that is not correct, is that true: that Mr. McGahan might have used the word, "producing equipment" in addition to referring to the refinery?

(Testimony of David Zeidenfeld.)

A. It is pretty hard for me to answer whether he did or he didn't. All I can say is in my own mind I pictured it as a refinery, as being that type of a deal that it was.

Q. I am asking you for conversation. [294]

A. I thought it was a refinery deal all along and I don't recall him saying about producing equipment up there.

Q. Are you now changing your testimony and saying that you do recall that he did not use the words "producing equipment" at either of those two conversations?

A. I can't be too definite in giving an answer on that.

Q. I call your attention again to the deposition or the portion of the deposition which I read to you this morning, the question appearing on page 5, which refers to the first conversation you had with Mr. McGahan in September of 1940.

The Court: May I ask is this something that you have already asked the witness about?

Mr. Paradise: Yes, sir.

The Court: I don't see any occasion to go over it a second time.

Mr. Paradise: All right.

Q. By Mr. Paradise: You have mentioned these 10 pages that Mr. McGahan showed you during the last part of November. Did Mr. McGahan offer to let you read those pages?

A. As I recall it, he said, "Here, I have some pages," and he just fingered through these pages pretty fast, and I kept telling him that all I am interested in is how

(Testimony of David Zeidenfeld.)

many tons are in the deal. As far as offering to let me read them, if I had asked him for them, he probably would have let me read them.

Q. Were you looking at the pages with him? [295]

A. I was just looking at them as he thumbed through them pretty fast.

Q. Were you on the same side of the desk with him?

A. I walked around to the other side of the desk. He asked me to come around.

Q. Did you look at the pages as he turned them over?

A. As far as looking at them, I merely glanced at them, but I don't recall anything on the pages.

Mr. Paradise: That is all.

Mr. Krasne: That is all.

The Court: I would like to ask the witness this. While you were in the employ of the plaintiff, were there any occasions when you reported to your employer about a prospective deal on which you were personally not intending to bid but which you considered your employer might like to investigate to see whether a bid would be submitted?

A. There was only one occasion that I recall where a deal like that came up outside of this deal.

The Court: And what was that other occasion?

A. That was a deal on some cranes that the U. S. Engineering Department had for sale, and Mr. Ferer took that up by himself.

(Testimony of David Zeidenfeld.)

The Court: And do I understand that, except on the so-called Casmalia deal and this one with the U. S. Engineering Department, you submitted bids on all other deals with which you had anything to do while you were in the employ of the [296] plaintiff?

A. That is right. I can volunteer some information, if you want, as to the extent of my activities in detail.

The Court: No; I am not asking you for that. Before your deposition was taken in this case, did anyone talk to you about this transaction so far as what testimony you might be asked to give?

A. No. The only thing that happened before this deposition was that I got a call by Mr. McGahan that Richfield would like to have me give them a deposition. And then I was up to Mr. Paradise's office, I think, a day or so before the deposition and I told him at that time, "Being neutral in this thing, I would like to tell Mr. Ferer that I am going to give you a deposition, too," so that I could be neutral on both sides, as I was doing business with both parties. Now, being in business by myself, I do business with Mr. Ferer and sometimes with the Richfield Oil Corporation since this deal came up. So all during this case I have been trying to act as a neutral.

The Court: I haven't asked you that. I am merely trying to find out whether anybody spoke to you about this case before your deposition was taken. So far you have answered that one day Mr. McGahan called you up. Now, tell us again what that conversation was.

A. I was told Mr. Paradise wanted to see me in his office and I came up to Mr. Paradise and he asked me

(Testimony of David Zeidenfeld.)

[297] pertaining to what my conversations were or what my recollection was as to what I had to do with this deal; and I told him at that time that I wanted to see the other side and see what this was all about. This was really the first thing I heard about that there was a lawsuit going on and I went up to see Mr. Ferer about it.

The Court: Mr. Morris Ferer?

A. Morris Ferer. And I asked him about it and there was really nothing much said about the whole thing. There was nothing which would influence me one way or the other.

The Court: I haven't asked you that. Do I understand you to say, then, that the first you heard about this lawsuit was that one day Mr. McGahan telephoned you and asked you to go to the office of Mr. Paradise and tell Mr. Paradise what you knew about this transaction?

A. That is right.

The Court: Now, do I understand, before going to the office of Mr. Paradise, you told Mr. McGahan that you wanted to be neutral and, therefore, you wanted to talk to Mr. Morris Ferer before you gave your deposition?

A. Well, that was after I got to Paradise's office. I told Mr. Paradise that before I gave a deposition that I would rather they subpoenaed me and made me come in rather than voluntarily coming in to give a deposition.

The Court: Let's see if I now understand you. After McGahan asked you to come up to the office of Mr. Paradise, [298] you did go to that office?

A. Yes, sir.

(Testimony of David Zeidenfeld.)

The Court: And there you were questioned about what you knew of the so-called Casmalia deal?

A. That is right.

The Court: Did you answer those questions or did you say first that you wanted to inform Mr. Morris Ferer?

A. I answered the questions.

The Court: And then, while you were in the office of Mr. Paradise, did you make some statement to the effect that you were going to tell Mr. Morris Ferer what had taken place? A. That is right.

The Court: And that you would rather that you be subpoenaed instead of you voluntarily coming up to give your deposition? A. That is right.

The Court: Did you then go to see Mr. Morris Ferer?

A. I saw Mr. Ferer after that.

The Court: And did you see him before your deposition was taken in this case? A. I believe I did.

The Court: Where?

A. I think I went up to Mr. Krasne's office and met Mr. Ferer there.

The Court: How did you learn that you were to meet Mr. Ferer at Mr. Krasne's office?

A. I think I phoned Mr. Ferer and told him and he said, [299] "It might be better if you come up to the attorney's office"; not that there were any questions asked of me very much but he wanted to see me up there.

The Court: So then you did meet Mr. Ferer at the office of Mr. Krasne? A. That is right.

(Testimony of David Zeidenfeld.)

The Court: Then were some questions asked you there?

A. Well, not very much. They more or less asked me—or I voluntarily gave them an outline as to what had taken place up at Richfield.

The Court: Did anything else take place on that occasion?

A. That is as far as I know and I think the next day there was the deposition taken.

The Court: Since your deposition was taken, have you spoken to anyone about this case?

A. Since the deposition was taken, I spoke to Mr. Krasne pertaining to certain things in the deposition, as to what I meant.

The Court: Where did you speak to him?

A. I was up to his office.

The Court: How did you happen to go there?

A. Mr. Krasne called me up and asked me about it and I told him, "Well, I will come up and see you about it and look over it."

The Court: And then you went to his office and what took [300] place there?

A. Nothing. He asked me a few questions pertaining to something in a certain part of the deposition, where my questioning—or he tried to show me where my questioning as far as Mr. Paradise was concerned was in favor of Richfield; that where he asked me questions it was in favor of Richfield. And he asked me just what

(Testimony of David Zeidenfeld.)

I meant by it so that, when it comes before the court as it is here, I will have to give some conclusive point one way or the other on the thing. And I as much as told him that as far as I am concerned I only tell it the way I can and I would like to read that deposition over again and get an idea for myself what it is. But I didn't read that deposition since that time. I didn't read it all then.

The Court: Since that conversation that you have last mentioned, have you talked to anybody else about this case? A. That is about all; nothing else.

The Court: I have no other questions.

Mr. Paradise: That is all.

Mr. Krasne: No other questions.

Mr. Paradise: Mr. Montgomery, please take the stand.

The Court: I think we will take a short recess, for five minutes.

(Short recess.) [301]

R. D. MONTGOMERY,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: Please state your name.

A. R. D. Montgomery.

Direct Examination.

Q. By Mr. Paradise: You are now connected with the Richfield Oil Corporation, Mr. Montgomery?

A. I am.

Q. In what capacity?

A. I am manager of the production department.

(Testimony of R. D. Montgomery.)

Q. What are the functions of the production department, that is to say, what operations does it cover?

A. Drilling and producing oil wells.

Q. Would you state generally, Mr. Montgomery, your experience in the drilling and producing and operating of oil wells?

A. I first went into the oil fields in 1911 as a workman, operator, tool dresser, driller, pumper and gauger and kept in that oil business until date with three years' exception, when I was in the mining business, which I had previously studied for in school.

Q. At what school was that?

A. The University of California.

Q. Have you been employed by any other oil companies [302] other than the Richfield Oil Corporation?

A. Yes, sir.

Q. In connection with the drilling and producing of oil wells? A. Yes, sir.

Q. By what other companies?

A. The first years of my experience in the oil business I was employed by one or two small companies and thereafter by the Standard Oil Company for several years and then, for the last 16 years, by the Richfield Oil Company or its predecessor.

Q. While you were employed by the Standard Oil Company, was that in connection with the production and operation of oil wells?

A. It was. I was in the field both in the southern part of the State and the northern part of the State, and in South American countries I was in charge of all their developments down there, both drilling and producing.

(Testimony of R. D. Montgomery.)

Q. Prior to the time you were employed by Richfield Oil Corporation, were you employed by the receiver of Richfield Oil Company of California? A. I was.

Q. In the same capacity you are now employed by the Richfield Oil Corporation? A. Yes, sir.

Q. What was the period of that? [303]

A. 1931 to 1937.

Q. In 1931 was the date when the receiver was appointed, was it? A. Yes, sir.

Q. Prior to that, were you employed by Richfield Oil Company of California?

A. Yes; I became connected with Richfield Oil Company of California in 1926.

Q. Are you familiar with the Casmalia oil field, the property owned by Richfield Oil Corporation?

A. I am.

Q. Do you know at what time or at what period the wells were drilled in that field?

A. They were drilled from 1917 to 1925, that is, drilled and produced.

Q. Do you know when production stopped of those wells? A. In 1925.

Q. At that time, in 1925, when production stopped, do you know approximately the quantity of oil that was then being produced from those wells?

A. The records indicate that the wells had produced some 7,000,000 barrels of oil.

Mr. Sturzenacker: Just a minute. We move to strike the answer as not responsive to the question.

The Court: The answer may go out.

(Testimony of R. D. Montgomery.)

Q. By Mr. Paradise: Do you know, other than from your [304] recollection of the records, what the production was at that time?

The Court: May I inquire is there any difficulty here about that? This sounds to me like a preliminary question.

Mr. Paradise: Yes.

The Court: I gathered from discussion or comments made during the trial that all are agreed that this field at one time was in production of low grade oil over a period of years and that producing operations ceased some time about 1925 or 1926.

Mr. Paradise: Yes.

The Court: Do we need to spend any more time on that subject?

Mr. Paradise: No, if the court please; not on that phase of it. I was leading up to the point of the present productivity of the property; I mean the capabilities of producing.

Q. By Mr. Paradise: Do you know, Mr. Montgomery, at the time production stopped in 1925, whether the oil field under the Casmalia property was depleted?

Mr. Sturzenacker: Just a minute. That calls for a conclusion of the witness, for which he has not been qualified.

The Court: I think perhaps this observation may be of assistance. I think it is pertinent to inquire whether or not the producing department, if that is the proper term to use, of Richfield took a position one way or another

(Testimony of R. D. Montgomery.)

relative to the future possibilities of producing oil from this field, [305] regardless of whether their judgment was correct or not.

Q. By Mr. Paradise: In your opinion, Mr. Montgomery, has the field been depleted, fully depleted?

A. It has not.

Q. Do you know if there is any present production from the same oil pool?

A. There is production on properties adjacent to and alongside of this property that we are discussing.

Q. By what company?

A. Oliver C. Fields' Casmite Oil Company. It produces from 10 wells approximately 500 barrels a day at the present time.

Q. What was the first examination you made of the Casmalia property after becoming associated with the Richfield Oil Company?

A. I looked into the property for the purpose of resuming production.

Q. Will you state when that occurred?

A. In 1930. There were a great many obstacles to be cleared up and there were a great many changes to be made in the type of operation that I would propose as compared to the type of operation that had been going on on this property.

Q. What did your investigation consist of in 1930, Mr. Montgomery?